In The

SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 75-745

CHAYES VIRGINIA CORP, A Wholly Owned Subsidiary of BCC Industries, Inc.,
Petitioner (Respondent below)

—*vs.*—

NATIONAL LABOR RELATIONS BOARD,
Respondent (Petitioner below)

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND APPENDICES A, B, AND C

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INDEX

CASES CITED

STATUTES

MISCELLANEOUS

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To the Honorable, the Chief Justice of the United States And the Associate Justices of the Supreme Court of the United States:

The Petitioner, Chayes Virginia Corp. (hereafter referred to as "Virginia") respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit entered in this proceeding on July 22, 1975.

OPINION BELOW

The opinion of the Court of Appeals will not be reported because it is designated as an "Unpublished Order" pursuant to said Court's Rule 28. It is printed in Appendix A annexed hereto.

JURISDICTION

The judgment of the Court of Appeals was entered on August 22, 1975. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the Court below erroneously and unconstitutionally refused to set aside a certification election or to remand this matter for hearing relating to objections filed by Virginia to the certification election in light of this Court's decision in *N.L.R.B. v. Savair Manufacturing Co.*, 414 U.S. 270(1973) which stands for the proposition that, regardless of source—union or company conduct—the same rules must be applied to conduct that serves as the basis for objecting to an election.

CONSTITUTIONAL PROVISIONS AND STATUTE INVOLVED

The pertinent constitutional provision involved is as follows:

> ". . . nor shall any person . . . be deprived of life, liberty or property, without due process of law; . . ."

STATEMENT

Virginia operates a plant in Evansville, Indiana which is engaged in the production of dental chairs and related items. (Appendix B, p. 16) On October 2, 1972 a petition for a Board conducted election was filed in Case No. 25-RC-5155 by the International Union of Electrical Radio and Machine Workers, AFL-CIO (hereafter "I.U.E.") for certification as bargaining representative of Virginia's employees. An election was held and the I.U.E. won the election by 3 votes. On December 20, 1972 Virginia filed objections to the election with the Board, asserting conduct of the I.U.E. prevented a fair and lawful election. The Board through its local Regional Office investigated the matter and issued a decision recommending to the Board in Washington that the objections be overruled and that a Certification of Representative be issued. Virginia filed exceptions to this decision, and after review by the Board in Washington, the decision of the Regional Office was affirmed.

At no point in the above was Virginia afforded an opportunity for an evidentiary hearing. Thereafter, Petitioner refused to comply with the Board certification issued in due course; and this proceeding was begun in the form of an unfair labor practice charge filed by the I.U.E. in Case No. 25-CA-5606. After the issuance of a complaint and the filing of pleadings and other papers (contained in Appendix C), Counsel for the General Counsel of the Board moved for summary judgment. Without granting an evidentiary hearing on either Virginia's Objections or any form of its responses to the motion for summary judgment, the Board granted the motion and on petition for enforce-

ment of this order the Court below granted enforcement. (Appendix B contains the formal papers which were before the Court below in addition to Appendix C which is Virginia's portion of the transcript before the Court of Appeals while Appendix A is the Decision of the Court below.)

The decision of the Court below, in effect, abdicates the judicial function by simply reciting the facts that support the Board's findings and relying on the Board's expertise or discretion to support its decision. By way of material circulated by the I.U.E. prior to the election, Virginia submitted the following to the Board in support of its Objections and by way of Answer and Response to the Motion for Summary Judgment.

1. Union Polling of Employees: An employee was called by a "Mr. Snodgrass," but the employee was not at home. (Appendix C, Resp. Ans. Ex. H., p. 1) The same was true of another employee. (Respt. Appendix C, Ans. Ex. H., p. 2) Another employee did respond to the same caller, Mr. Snodgrass, and was asked, "how I felt about the union." (Appendix C., Respt. Ans. Ex. H., p. 3) During the same conversation Snodgrass advised that "We (the I.U.E.) are calling some of the employees to find out their feeling about the Union, or words to that effect." (Appendix C, Respt. Ans. Ex. H., p. 4) This activity took place two or three days prior to the representation election.

2. Threats Made to Employees: At least one employee, who was deaf, was threatened about not supporting the union over a rather long period of time. (Appendix C, Respt. Ans. Ex. G., p. 1) This type of conduct was not limited to a single employee. (Appendix C, Respt. Ans. Ex. G., p. 2) Or as simply stated: "About Donna (the I.U.E. adherent) being on Charlotte (the deaf girl) this was what you might call gossip in the shop since everyone knew about it." (Appendix C, Respt. Ans. Ex. G., p. 1)

3. Unlawful Promise of Benefits: In a letter to employees, the I.U.E. stated that "All wages under $2.75 an hour are exempt from any control." (Appendix C, Respt. Ans. Ex. I, Handbill 39) The applicable regulations in effect at the times in question stated:

> "Under the new regulations (retroactive to July 15, 1972) persons now making less than $2.75 per hour are permitted to receive increases which will bring their pay up to that level. However, if such increases amount to 5.5% or more of the previous base pay to the unit, further increases are not permitted unless a special exception is granted by the Internal Revenue Service or the Pay Board. If an increase of less than 5.5 percent is required to reach the level of $2.75 the total permissible increase is 5.5 percent above the base pay level (but not a full 5.5 percent above $2.75)." CCH ECONOMIC CONTROL P. 1631.20, p. 1633-9 (Transfer Binder, Phase II Rules, Nov. 14, 1972—Jan. 10, 1973)

4. Unlawful Waiver of Initiation Fees: In a handbill distributed by the I.U.E. on November 8, 1972 the following statements as to fees were made:

> "INITIATION FEES—YOU AND EVERY OTHER WORKER IN YOUR PLANT ON ELECTION DAY WILL BE GIVEN AN OPPOR-

TUNITY TO JOIN THE IUE WITHOUT PAYING ANY INITIATION FEE." (Board Brief on Appeal, p. 14)

5. **Misrepresentations in Handbills**—On the day before the representation election the I.U.E. distributed a handbill indicating that employees from another company had received substantial wage increases added on to substantial wage rates existing prior to additional increases. Similarly, this handbill indicated that at one time Virginia employees had paid vacations and these were taken away. (Appendix C, Respt. Ans. Ex. I. Handbill 52) Other facts show that this handbill was incorrect in that:

"Handbill No. 52 of 12-14-72 is most misleading, since any fair reading of the prior handbills indicates that this handbill was not prepared by the employees of Indian Industries, but by the same person who prepared the other handbills involved in this case. I might add that in checking with Indian Industries, the job rate structure contained on the first page of this open letter is very misleading in that only 29 of the company's employees occupy these positions and most of the employees at Indian Industries started at $1.80 an hour and worked up to $2.50 an hour, although new employees progress rather rapidly from $1.80 to $2.25. The point is the Union misrepresents the wage structure by placing emphasis on the higher wages. I might add that I was not aware of this fact until after the election when we took an opportunity to check this matter . . . Also, this handbill contains a misrepresentation with reference to vacations, in the sense that it implies that this

employer gave vacations and then took them back, which is not the truth." (Appendix C, Respt. Ans. Ex. J., p. 7)

In addition, the following matters appear in the handbills: (1) Reference to company financial data that could not have been obtained except through theft (Appendix C, Respt. Ans. Ex. I, Handbills, 38, 39, 40, 41, 46, 49 and 50 and Ex. I, p. 1-2); (2) Repetitions of misstatements as to wage controls (Appendix C, Respt. Ans. Ex. I, Handbills 39 and 46); (3) Misrepresentations as to the attitudes of religious leaders on the subject of unions (Board Brief on Appeal, pp. 19-21); (4) Incorrect assertions as to I.U.E. procedures relating to strikes and their sanction by its International President (Appendix C, Restp. Ans. Ex. I, Ex. C annexed compared with handbills 22, 28, and 29 also annexed); (5) A guarantee of at least 50¢ an hour wage increase (Appendix C, Respt. Ans. Ex. I, Handbill No. 46).

REASONS FOR GRANTING THE WRIT

I.

THE COURT BELOW ERRONEOUSLY AND UNCONSTITUTIONALLY REFUSED TO SET ASIDE A CERTIFICATION ELECTION OR TO REMAND THIS MATTER FOR A HEARING RELATING TO OBJECTIONS FILED BY VIRGINIA TO THE CERTIFICATION OF ELECTION IN LIGHT OF THIS COURT'S DECISION IN N.L.R.B. V. SAVAIR MANUFACTURING CO., 414 U.S. 270(1973) WHICH STANDS FOR THE PROPOSITION THAT, REGARDLESS OF SOURCE—UNION OR COMPANY CONDUCT—THE SAME RULES MUST BE APPLIED TO CONDUCT THAT SERVES AS THE

BASIS FOR OBJECTING TO AN ELECTION, THEREBY DEPRIVING VIRGINIA'S EMPLOYEES OF THEIR RIGHTS UNDER SECTIONS 7, 8, 9 AND 10 OF THE NATIONAL LABOR RELATIONS ACT, 29 U.S.C. 157, 158, 159. 160.

Any reading of the entire record in this case and in turn relating this reading to the decisional results in this area indicates that the assumption is union conduct must be viewed less stringently than employer conduct when it comes to deciding whether or not certain conduct either requires that an election be set aside or that the same conduct requires a finding of an unfair labor practice. (Note: The Board has for many years held that conduct that requires that an election be set aside does not have to be so serious as to constitute an unfair labor practice. *General Shoe Corporation*, 77 NLRB 127(1948) (*A fortiori* if conduct is found to be an unfair labor practice it can also serve as grounds for setting aside an election.) Although argued in this case and ignored by the Board and the Court below, Section 7 of the Act, in relevant part, states as follows:

> "Employees shall have the right to self-organization, to form, to join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities . . ." 29 U.S.C. S 157.

Rather recently, this Court took occasion to interpret the legal relationship between the two sets of rights granted employees under the above section of

the National Labor Relations Act. In concluding that these two sets of rights are equal rights, this Court observed:

> "Any procedure requiring a 'fair' election must honor the right of those who oppose a union as well as those who favor it. The Act is wholly neutral when it comes to that basic choice. By S. 7 of the Act, employees have the right not only to 'form, join or assist' unions but also the right 'to refrain from any or all of such activities.' An employer who promises to increase fringe benefits by $10 for each employee who votes against the union, if the union wins the election, would cross the forbidden line under our decisions. See *National Labor Relations Board v. Exchange Parts Co.*, 375 U.S. 405, 84 S. Ct. 457, 11 L.Ed.2d 435 . . .
>
> • • • •
>
> "The Board in its supervision of union elections may not sanction procedures that cast their weight for the choice of a union and against a nonunion shop or for a nonunion shop against a union. . . .
>
> • • • •

If we respect, as we must, the statutory right of employees to resist efforts to unionize a plant, we cannot assume that unions exercising powers are benign towards their protagonists or the employer." *N.L.R.B. v. Savair Manufacturing Company*," 414 U.S. 270(1973).

Although this point was made to the Court below, it was not discussed or dealt with in its decision. In what follows Virginia will point out to this Court areas in which employer conduct violated the Act and, by definition, would thus serve as the basis for setting aside an election, noting that similar conduct, from Virginia's point of view, was engaged in by the I.U.E. in this case. The argument here is, of course, that if conduct on the part of both unions and employers must be gauged by the same standards, this matter must, after granting this petition, be either decided against the Board or remanded to it for a decision in light of this principle since it was ignored by it and the Court below in deciding this matter.

1 Union Polling of Employees: The Board has adopted very rigid standards in the area of employee polling, which are well stated in the following:

> "Absent unusual circumstances, the polling of employees will be violative of Section 8(a)(1) of the Act unless the following safeguards are observed: (1) the purpose of the poll is to determine the truth of a union's claim of majority, (2) this purpose is communicated to the employees, (3) assurances against reprisals are given, (4) the employees are polled by secret ballot, and (5) the employer had not engaged in unfair labor practices or otherwise created a coercive atmosphere." *Struksnes Construction Co.*, 165 NLRB 1062, 1064(1967).

None of these safeguards were present in this case. Similarly, it is axiomatic that direct inquiry into an employee's union activities or sympathies is an unfair

labor practice more subject to being condemned than a poll. See the observations of the Board in *Bill Pierce Ford, Inc.*, 181 NLRB 929, fn. 1(1970)

2. Threats Made to Employees: Both Section 8(a)(1) and (b)(1)(A) of the Act make it an unfair labor practice for either an employer or a union to "restrain" or "coerce" employees in the exercise of their rights guaranteed under the Act. It seems strange, indeed, that the activity with reference to the deaf girl did not cause the Board some concern.

3. Unlawful Promise of Benefits: As shown by *Savair*, supra, any promise of benefit on the part of the employer amounts to an unfair labor practice under Section 8(a)(1) of the Act. At the relevant time in question there were wage and price controls defining what the limits on wage increases were, yet the I.U.E. chose to ignore this, as did the Board and the Court below.

4. Unlawful Waiver of Initiation Fees: The language in the union handbill set out in the above with reference to initiation fees speaks in terms of "you (the employee receiving the handbill) and every other worker in your plant on election day" not being required to pay initiation fees. (Board Brief on Appeal, p. 14) The Court below, apparently, found this waiver to be unconditional and thus in conformity with this Court's point of view expressed in *Savair*, supra, yet does this waiver speak in unconditional language. Virginia asserts this waiver is clearly conditional and must be condemned. This is so because the waiver is limited to employees "in your plant on election day." The question is obvious—what about employees hired

after the election, yet before a contract is signed, and employees not voting due to illness or leave of absence. Obviously, they would have to pay initiation fees, while their fellow employees, according to the waiver in this case, would not have to pay them. Thus, the only way a given employee could take advantage of the waiver is to be in the plant on election day and vote for the I.U.E. No one hired after the election, but before a contract is reached, or anyone not able to vote for whatever reason just could not have taken advantage of the waiver. To be unconditional, a fee waiver would have to reach everyone employed prior to the execution of an agreement with the I.U.E., not just an election date. Otherwise, the nature of the condition—being in the plant and voting the union in—would by definition be apparent.

5. Misrepresentations in Handbills: The Board has traditionally held that no matter how artful, misrepresentations that run to such vital matters as wages, working conditions and so on are to be condemned. *Hollywood Ceramics, Inc.*, 140 NLRB 221 (1962) Most significant, however, and evidence of a dual standard where none should be supplied, is the I.U.E.'s promise of a 50¢ an hour wage increase. As once again noted in *Savair*, supra, any such statement by an employer would amount to an unfair labor practice. In fact, the I.U.E.'s entire course of conduct in this matter indicated to Virginia's employees that a vote for it was a vote for a substantial increase in wages and benefits, contrary to Section 8(d) of the Act which provides in relevant part that:

> "(After defining the obligation to bargain collectively) . . . , but such obligation does not compel

> either party to agree to a proposal to require the making of a concession . . ." 29 U.S.C.A. 158(d)

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Court of Appeals for the Seventh Circuit, or in the alternative, this cause be remanded with directions to the Court below to direct the Board to consider this matter in light of this Court's decision in *N.L.R.B. v. Savair Manufacturing Co.*, 414 U.S. 270 (1973).

Respectfully submitted,

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APPENDIX A

CERTIFIED COPY

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

(ARGUED SEPTEMBER 11, 1974)

JULY 22, 1975

A True Copy:
Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit.

"Unpublished Order" Not to be cited, 7th Circuit Rule 23.

Before

Hon. THOMAS E. FAIRCHILD, Chief Judge

Hon. ROBERT A. SPRECHER, Circuit Judge

Hon. PHILIP W. TONE, Circuit Judge

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

No. 74-1148 vs.

CHAYES VIRGINIA CORP., A WHOLLY OWNED SUBSIDIARY OF BCC INDUSTRIES, INC.,
Respondent.

} On Application for Enforcement of an Order of The National Labor Relations Board

O R D E R

The National Labor Relations Board seeks enforcement of its order finding that the Chayes Virginia Corporation refused to bargain with its employees' certified bargaining agent in violation of Sections 8(a)(5), (1) of the National Labor Relations Act (29 U.S.C. §§158(s)(5) and (1)). The company concedes refusal to bargain but challeges the certification.

On December 14, 1972, an election was conducted by the Board. The vote was 34 to 31 in favor of the union, with one

challenged ballot and one void ballot. The company filed timely objections to certain pre-election conduct of the union which allegedly affected the outcome of the balloting. The company requested that the election be set aside or, in the alternative, that a hearing be granted. The Regional Director conducted an administrative investigation in which the parties were afforded opportunity to submit evidence and issued a Supplemental Decision and Order in which the company's objections were overruled and the union certified as the exclusive bargaining agent. The company's request for review of this order was denied by the Board for want of any substantial issue. 1/ In the complaint proceeding, the Board granted the General Counsel's motion for summary judgment on the pleadings, concluding that all of the issues raised by the company as justification of its refusal to bargain were, or

1/ Under 29 C.F.R. §102.67(f), "[d]enial of a request for review shall constitute an affirmance of the regional director's decision . . ." There is no merit to the company's contention that the Board's failure to explicate its denial prevents proper judicial review, so long, as in the present case, the decision and order of the Regional Director sufficiently disclose the basis of the order. See, N.L.R.B. v. Metropolitan Life Insurance Co., 380 U.S. 438, 443, n.6 (1965),.

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could have been, litigated in the underlying representation proceeding and that the company neither offered to adduce at a hearing any newly discovered or previously unavailable evidence, nor alleged any special circumstances which would require the Board to re-examine its prior decision. In resisting enforcement, the company contends that in the representation proceeding the Board should have denied certification as a matter of law, or at least that the Board should have conducted a hearing into the company challenges. 2/

I. PRE-ELECTION MISCONDUCT

In its objection to certification, the company charged that the union impermissibly affected the election result by conducting a pre-election poll of employee sentiment; threatening and intimidating employees; offering improper inducements to employees; and engaging in numerous and substantial campaign misrepresentations. Adopting the Supplemental Decision

2/ The company also seeks denial of enforcement in light of the recent decision of the Second Circuit in KFC National Management Corp. v. N.L.R.B., 497 F. 2d 298 (2nd Cir. 1974). The company at no time presented the Board with this objection to the manner of review of the certification decision, and thus, under §10(e) of the National Labor Relations Act (29 U.S.C. §160(e)), it may not be raised for the first time in this court.

and Order of the Regional Director, the Board concluded that the objections were insufficient to require the setting aside of the election result. "Whether to set aside an election because of incidents during the campaign period is a matter for the sound discretion of the Board." Rockwell Mfg. Co., Kearney Div. v. N.L.R.B., 330 F.2d 795, 796 (7th Cir. 1964), cert. denied, 379 U.S. 890. We must defer to the Board's expertise unless we are prepared to say that the Board's discretion was abused. See, N.L.R.B. v. Southern Health Corp., F.2d (7th Cir. 1975); N.L.R.B. v. Red Bird Foods, Inc., 399 F.2d 600, 601 (7th Cir. 1968).

The company's first objection charged that the union "close in time to the date of the election, conducted an illegal polling of Employer's employees, in that it asked them through a planned telephone campaign how they were going to vote in the election." The company argues that, since direct inquiry into an employee's union activites or sympathies by an employer, absent limiting safeguards, is an unfair labor practice, cf. Struksnes Construction Co., 165 N.L.R.B. 1062, 1064 (1967), it is likewise coercive if such inquiry is

conducted by the union. This argument ignores the substantially different position of employer and petitioning union with regard to potential coercive impact of pre-election conduct and has been rejected by the Board, cf. Plant City Welding and Tank Company, 119 N.L.R.B. 131, 133 (1957), and by this court. Louis-Allis Co. v. N.L.R.B., 463 F.2d 512, 517 (7th Cir. 1972). Absent some showing of coercive impact, the conduct alleged would not be objectionable.

The company supported its charge by averring that "we are advised that the Union conducted a very extensive poll of all our employees by telephone . . ." The company did not disclose the source of this advice, however, but rather produced evidence that one employee was telephoned concerning his union sympathies by an individual claiming to be a union agent and two other employees were telephoned by the same individual while they were not at home. No evidence was offered tending to establish any extensive or coercive polling. Under the circumstances present, we discern no abuse of discretion in the Board's conclusion that, even if true as alleged, the union's conduct was unobjectionable.

The company's second objection charged that the union had "engaged in an unlawful campaign of threats, intimidation and coercion among Employer's employees . . . ." In support of this allegation, the company offered evidence that two employees had been threatened by fellow-employees concerning their anti-union sentiments. One affidavit disclosed that a deaf employee had been called a "chicken" for refusing to support the union and was warned that all deaf employees would be laid off if the union lost. The second affidavit charged that an employee was cautioned that "something" might happen to her home or car if she failed to sign a union card. The Board did not abuse its discretion in finding these incidents insufficient to require the overturning of the election result. During the Board's investigation, the deaf employee denied any threat connected with the election. Moreover, the record discloses that she tested out the validity of the prophecy of a layoff by reporting it to an officer of the company who assured her of its falsity and instructed her not to be concerned. The second affidavit, which was untimely submitted, fails to identify either the name of the fellow-employee or to establish that she was in any way associated with the union (compare

N.L.R.B. v. Griffith Oldsmobile, Inc., 455 F.2d 867, 870-71 (8th Cir. 1972) with Cross Baking Co. v. N.L.R.B., 453 F.2d 1346, 1348 (1st Cir. 1971)) and offers no indication as to when during the campaign the threat occurred or whether it had any coercive effect upon the employee's actions at the polls. 3/

The company also objected to certain alleged promises to employees by the union of benefits which could be expected in the event of a union victory. Specifically, it was asserted

3/ During the Regional Director's investigation, the company sought to produce evidence concerning the content and effect of the union's campaign literature. The Regional Director refused to interview employees concerning this matter, and instead permitted the company to submit affidavits after the close of the investigation which would be received as an offer of proof. Inasmuch as these proffered affidavits described the affiants' interpretation of the union's communications, they were properly refused since the documents spoke for themselves. The affidavits also contained hearsay reports of plant rumors concerning the alleged coercion of the two employees discussed above, which were rejected as untimely submitted. In light of the necessity of prompt resolution of pre-certification representation disputes, the fact that the company sought and obtained one extension of time from the Board, and the lack of any allegations of coercive effect of the rumors, the rejection was not an abuse of discretion. One additional affidavit concerning hearsay allegations of rumors of coercion of a named employee was timely submitted but properly rejected on the ground that the employee who was the subject of the rumor denied the alleged coercion in a statement to the Board.

that throughout the pre-election campaign, the union "indicated to Employer's employees that were it designated as their representative, these employees would automatically obtain substantial wage and fringe benefit increases in excess of those allowed by federal guidelines, thereby indicating that an automatic exemption to the law would be made." We agree with the Regional Director that "[a] careful examination of the documents reveals no such promise, more than the typical campaign rhetoric easily evaluated by employes." Union promises of such benefits have been characterized as legally unobjectionable. N.L.R.B. v. Golden Age Beverage Co., 415 F.2d 26, 28, 30 (5th Cir. 1969). Moreover, the record establishes express disparagement of the claim in several of the company's campaign documents. Concerning the alleged conflict with federal guidelines, we agree with the Sixth Circuit which has held, under similar circumstances, that: "[i]nformation about the wage freeze was not within the special knowledge of the union. It had been widely publicized and debated. And, the federal government had established places where answers to specific questions about the freeze could be obtained." Harlem No. 4 Coal Co. v. N.L.R.B., 490 F.2d 117, 125 (6th Cir. 1974), cert. denied, 416 U.S. 986.

No. 74-1148 CERTIFIED COPY

The company also challenged as coercive the union's promise in a pre-election circular that, if certified, every employee working in the plant at the time of the election would be given the opportunity to join the union without paying initiation fees. It is well established that the offer of an unconditional waiver of fees to all employees across the board after a successful certification is not coercive. Macomb Pottery v. N.L.R.B., 376 F.2d 450, 454-55 (7th Cir. 1967); N.L.R.B. v. Crest Leather Mfg. Co., 414 F.2d 421, 423 (5th Cir. 1969). N.L.R.B. v. Savair Mfg. Co., 414 U.S. 270 (1973), wherein the Supreme Court invalidated the practice of limiting the waiver of initiation fees to only those employees who sign authorization cards prior to election, does not require a different result. The Court expressly recognized the continuing validity of unconditional post-election waivers of the sort involved here. Id. at 274, n.4.

The company's remaining objections concerned alleged substantial misrepresentations contained in the union's post-election campaign literature. The Board concluded that "none of the material is objectionable either as to its content or

its timing . . . . ." We have carefully examined the challenged communication and find no abuse of discretion. The majority of specific instances of alleged misrepresentation occurred well prior to the date of election, permitting the company to correct any perceived misstatements if desired. Cf. N.L.R.B. v. Louisville Chair Co., 385 F.2d 922, 927 (6th Cir. 1967), cert. denied, 390 U.S. 1013; Hollywood Ceramics, 140 N.L.R.B. 221 (1962). The record reveals that the company in fact disputed in its own propaganda many of the claimed inaccuracies, Follett Corp. v. N.L.R.B., 397 F.2d 91, 95 (7th Cir. 1968). Before this court, the company focuses its argument on the union's alleged misrepresentations concerning wage rates in effect at another union employer, the company's profits, and the views concerning trade unionism of a national religious leader. 4/ We have examined all of the circulars in light of the company's allegations and find no abuse of discretion in the Board's conclusion that they were not objectionable. 5/

4/ The company also argues that the alleged improper action of unknown union adherents in obtaining a company profits work sheet without authorization required the setting aside of the election. Taking the allegations as true, the conduct, while improper, is not claimed to have been coercive or to have had any effect on the election result.

5/ The company argues that the Board's certification of the union must be deemed an abuse of discretion due to its failure

No. 74-1148

CERTIFIED COPY

II. DENIAL OF A HEARING

The company also challenges the refusal of the Regional Director and Board to direct a hearing on the company's objections in the representation proceeding and the Board's grant of summary judgment in the unfair labor practice proceeding. Under the Board's established practice, a hearing is granted on exceptions to an election only "if it appears to the regional director that substantial and material factual issues exist which, in the exercise of his reasonable discretion, he determines may more appropriately be resolved after a hearing . . . ." 29 C.F.R. §102.69(d). This rule properly reflects the underlying policy of expeditious resolution of representation disputes prior to certification. N.L.R.B. v. O.K. Van Storage, Inc., 297 F.2d 74, 76 (5th Cir. 1961). We have examined the company's objections to election and agree that the Regional Director did not abuse his discretion by denying the requested hearing and instead conduct-

5/ (Continued)

to consider the totality of the claimed misconduct in overruling the objections. We have reviewed the record closely and find no indication that the charges were not considered together. Moreover, we conclude that the objections, despite their number, were insufficient to require the setting aside of the election.

ing a complete and fair administrative investigation during which the company had full opportunity to present its case. Similarly, tne company's exceptions to the Regional Director's Opinion merely repeated its initial objections and did not present the Board with any evidence raising substantial and material factual issues.[6/]

The Board's grant of summary judgment in the unfair labor practice proceeding was also proper. The company's answer and response to the summary judgment motion admitted the refusal to bargain and interposed only defenses that had been previously raised and resolved in the representations proceeding. Cf. 29 C.F.R. §102.67(f). No special circumstances or newly available evidence was offered.

The Board's order will be enforced.

6/ The company asserted in its affidavit supporting its objections that evidence was difficult to obtain absent a hearing and attendant subpoena power. Such general allegations are insufficient to require the granting of a hearing.

an open letter

FROM INDIAN INDUSTRIES WORKERS

To All the Men and Women at Virginia:

We have been informed the management of your plant is knocking our contract in an effort to get you to vote against yourself. We happen to be proud of what we have accomplished since winning IUE Representation last April and don't think our contract is as your bosses want you to believe. Let's just look at some of our wage rates:

Machinist I	$4.25
Tool Repairman	$4.10
Press Set-Up/Operate	$3.10
Fork Truck Driver	$3.05
Press Operator I	$2.90
Maintenance Mechanic I ..	$3.60
Arrow Group Leader	$3.05
Assembler/Expediter	$3.00
Bow Spray/Finish	$2.70
Assembler I	$2.60
Bow Sander	$2.50

Our IUE Union negotiated those rates AT A TIME WHEN THE COMPANY SHOWED OUR NEGOTIATING COMMITTEE FINANCIAL RECORDS PROVING IT WAS IN A VERY POOR FINANCIAL CONDITION.

Of course, our Union couldn't negotiate as many gains at a time when our Company was hurting as it could have if it was making the big profits made by Virginia.

But we did very well considering the conditions.

We know that the Virginia bosses have been making a big deal out of the 34¢ in general wage increases we negotiated. However, they didn't tell you that the general wage increases are just part of the wage increases we won.

In addition to our general wage increases, we negotiated numerous inequity raises costing the Company an estimated $35,000 to $40,000 during the course of our contract. A lot of Indian workers will be getting more in inequity raises than the general raises we get every year.

When we voted for the IUE last April we didn't have a single paid holiday. That's right — not a one.

We negotiated SIX PAID HOLIDAYS for the first year. In 1973, we move up to SEVEN PAID HOLIDAYS as we get the DAY AFTER THANKSGIVING off with pay. The third year of our contract calls for GOOD FRIDAY as a Paid Holiday.

Despite the financial difficulties of the Company — WE ARE GOING FROM ZERO TO EIGHT PAID HOLIDAYS IN OUR FIRST CONTRACT!

We understand that the Virginia bosses are making a big deal out of the 2 weeks vacation after 5 years it has promised for next year.

BEFORE WE WON IUE REPRESENTATION ONE WEEK WAS THE TOP PAID VACATION REGARDLESS OF SENIORITY -- SO THE SECOND WEEK OF VACATION IS A BIG GAIN FOR OUR HIGH PERCENTAGE OF EMPLOYEES WITH OVER 7 YEARS.

We went without a Union until last April so we know about how much you can count on Company promises. (Didn't Virginia give paid vacations around 1969 or 1970 and then take them back?) We know we are going to get our vacations next summer because they are written into a binding contract.

Our contract also provides for JURY DUTY PAY and up to three paid days off for a death in the family.

Before we got our IUE Union, you could work the same job as another person for years and never make as much pay. NOW OUR CONTRACT CALLS FOR EQUAL PAY FOR EQUAL WORK -- so you move up to the top pay of your classification with regular raises when you go on a job.

Before we got our Union, the Company did as it pleased when making promotions, laying off, hiring back and everything else.

Now, our contract has rules -- which we helped write -- for the Company to follow when those moves are made. If we are overlooked on a promotion, overtime, or one of our other rights, the Company is required to straighten its mistake out and pay us for any money lost.

That beats letting the Company be your prosecutor, judge and jury by a wide margin!

You can't put a price tag on it and it doesn't cost a Company a penny but you know the value of being treated fairly in a Union plant after going for years at the boss's mercy. Remember, we only won our Union last April and the old days are still fresh in our minds.

The Virginia bosses have been hitting you with the same anti-Union propaganda the Indian bosses put out last spring. You might be interested in the following --

They tried to scare us with strikes but we haven't lost a minute on strike.

We were told the "Union Bosses" would run our Union. We are the bosses of our Union deciding the issues and electing our officials in fair democratic elections.

They tried to scare us with dues -- but we didn't pay a penny in dues until our contract was signed. Now we pay $5.50 per month.

As for the assessment and fines lie all anti-Union bosses seem to put out, we can tell you from experience that it's all bull.

Just as the IUE said, every one of us working at Indian at the time we won our Union was given an opportunity to join without paying any initiation fee.

We were told that winning a Union would hurt employment -- OUR EMPLOYMENT HAS JUST ABOUT DOUBLED SINCE WE WON OUR UNION 72-20 ON APRIL 20! (We now have about 165 workers.)

Our IUE Union has made many more gains than the ones we have mentioned here, but you can get an idea of how well we have done at a time when Indian Industries was in financial trouble.

Considering that Virginia is making tremendous profits -- and you make $2200 chairs while our main product is ping-pong tables for which our Company gets as little as $24.50 -- we know you will do a lot better when you win your Union at Virginia.

We thank you for letting us set the record straight in regard to our IUE contract. We also would like to say -- WELCOME TO THE IUE!

ISSUED BY SATISFIED IUE MEMBERS
WORKING AT INDIAN INDUSTRIES

Appendix B

APR 4 1974

No. 74 1148

United States Court of Appeals

FOR THE SEVENTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

CHAYES VIRGINIA CORP., A Wholly Owned Subsidiary of BCC Industries, Inc.,
Respondent.

On Application for Enforcement of an Order of
The National Labor Relations Board

APPENDIX

ELLIOTT MOORE,
Deputy Associate General Counsel,
National Labor Relations Board.
Washington, D. C. 20570

THE CASILLAS PRESS, INC.—1717 K Street, N. W.—Washington, D. C.—223-1220

INDEX

APPENDIX

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-FIVE

CHAYES VIRGINIA CORP, A WHOLLY OWNED SUBSIDIARY OF BCC INDUSTRIES, INC.	
and	Case No. 25--CA--5606
INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, a/w AFL--CIO--CLC	

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the Matter of: Chayes Virginia Corporation, a Wholly Owned Subsidiary of BCC Industries, Inc.

Case No.: 25-CA-5606

10. 2. 72	Petition filed.
10. 16. 72	Notice of Representation Hearing, dated.
10. 30. 72	Hearing opened.
10. 30. 72	Hearing closed.
11. 14. 72	Regional Director's Decision and Direction of Election, dated.
11. 14. 72	Notice of Election, dated.
12. 14. 72	Tally of Ballots, dated.
12. 14. 72	Certification on Conduct of Election, dated.
12. 18. 72	Respondent's Objections dated.
2. 7. 73	Regional Director's Supplemental Decision and Order and Certification of Representative, dated.

2. 26. 73 Respondent's Exceptions received.

3. 19. 73 Board's telegram denying Respondent request for review, dated.

3. 21. 73 Respondent's letter requesting a decision why Respondent's request was denied, dated.

4. 5. 73 Board's letter stating why the request for review was denied, dated.

6. 1. 73 Charge filed.

6. 20. 73 Regional Director's Complaint and Notice of Hearing, dated.

6. 29. 73 Respondent's Answer to Complaint, dated.

7. 6. 73 General Counsel's Motion to Strike Portions of Respondent's Answer and Motion for Summary Judgment dated.

7. 12. 73 Regional Director's Order for Motion for Summary Judgment, received.

7. 24. 73 Board's Order Transferring Proceeding to the Board and Notice to Show Cause dated.

8. 3. 73 Respondent's Response to Notice to Show Cause, dated.

11. 6. 73 Board's Decision and Order, dated.

[Dated 11/6/73] [D--8045
Evansville, Ind.]

* * * * *

DECISION AND ORDER

Upon a charge filed on June 1, 1973, by International Union of Electrical, Radio and Machine Workers, a/w AFL--CIO--CLC, herein called the Union, and duly served on Chayes Virginia Corporation, a Wholly Owned Subsidiary of BCC Industries, Inc., herein called the Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 25, issued a complaint on June 20, 1973, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, complaint, and notice of hearing before an Administrative Law Judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on February 7, 1973, following a Board election in Case 25--RC--5155 the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;[1/] and that, commencing

1/ Official notice is taken of the record in the representation proceeding, Case 25--RC--5155, as the term "record" is defined in Secs. 102. 68 and 102. 69(f) of the Board's Rules and Regulations, Series 8, as amended, See LTV Electrosystems, Inc., 166 NLRB 938, enfd. 388 F. 2d 683 (C. A. 4, 1968); Golden Age Beverage Co., 167 NLRB 151, enfd. 415 F. 2d 26 (C. A. 5, 1969); Intertype Co. v. Penello, 269 F. Supp. 573 (D. C. Va., 1967); Follett Corp., 164 NLRB 378, enfd. 397 F. 2d 91 (C. A. 7, 1968); Sec. 9(d) of the NLRA.

on or about February 14, 1973, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On July 1, 1973, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On July 9, 1973, counsel for the General Counsel filed directly with the Board a motion to strike portions of Respondent's answer and Motion for Summary Judgment. Subsequently, on August 6, 1973, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Respondent's answer to the complaint and response to the Notice To Show Cause herein contend that the complaint should be dismissed and summary judgment denied because the Board made erroneous determinations in the underlying representation case.

Our review of the record in Case 25--RC--5155 indicates that, pursuant to the Regional Director's Decision and Direction of Election, an election was conducted on December 14, 1972,

in the appropriate unit. Of approximately 80 eligible voters, 34 cast ballots for, and 31 against, the Union, 1 ballot was challenged, and 1 void. Thereafter, the Respondent timely filed nine objections, which alleged, in substance, that the Union had interfered with the election by polling employees, intimidating them, waiving its initiation fee, and making various misrepresentations, and requested, in view of the closeness of the election, either that the election be set aside or that a hearing be held. After investigation, on February 7, 1973, the Regional Director issued his Supplemental Decision and Order and Certification of Representative in which he overruled the objections in their entirety and certified the Union. The Respondent then filed a request for review entitled "Exceptions with Brief Annexed," in which it reiterated all the aforementioned contentions and renewed its request for a hearing. By telegraphic order dated March 19, 1973, the Board denied the request for review, "as it raises no substantial issues warranting review." Subsequently, on March 28, 1973, Respondent filed a request for an explicated decision why Respondent's request was denied. By letter of April 5, 1973, the Board's Executive Secretary replied that, under Rule 102.67(f) of the Board's Regulations, a denial of review constitutes affirmance of the Regional Director's actions, that the Board does not issue an explicated decision unless review has been granted, and that the Board did not contemplate issuing a further decision in the matter. Thereafter, by letter dated April 10, 1973, the Respondent wrote the Board in which it contended that the Supreme Court's decision in Metropolitan Life[2/] required the Board to give an explicated decision in any matter.

2/ Metropolitan Life Insurance Co. v. N. L. R. B., 380 U. S. 438.

Respondent now raises again the same issues it raised in the underlying representation proceeding. However, these issues have already been decided adversely to it. Further, where no substantial and material issues of fact and law are presented, no due process issue can properly be raised and, therefore, no hearing is warranted,[3] despite the closeness of the election.[4]

Finally, with respect to the Respondent's request for a Board explication of its decision to deny review, we are of the opinion, after review of the Regional Director's Supplemental Decision and the Respondent's request for review thereof, that our conclusion that the request for review raises no substantial issues warranting review is a sufficient explication of the decision to deny review, and that the Regional Director's Supplemental Decision, articulating the reasons for his overruling of the Respondent's objections to the election and his certification of the Union as the exclusive representative of the employees in the appropriate bargaining unit, sufficiently discloses the basis for our Order herein so as to afford a proper basis for judicial review.[5]

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.[6]

3/ Farah Manufacturing Company, 203 NLRB No. 78; Reeves-Bowman, Division of Cyclops Corporation, 194 NLRB 155, and cases cited in fns. 3 and 4 thereof.

4/ Henderson Trumbull Supply Corporation, 205 NLRB No. 8; Modine Manufacturing Company, 203 NLRB No. 77.

5/ The Metropolitan Life decision does not require more.

6/ See Pittsburgh Plate Glass Co. v. N. L. R. B., 313 U. S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102. 67(f) and 102. 69(c).

All issues raised by the Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and the Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. We shall, accordingly, grant the Motion for Summary Judgment.[7]

On the basis of the entire record, the Board makes the following:

Findings of Fact

I. The Business of the Respondent

The Respondent, a corporation duly organized under, and existing by virtue of the laws of the State of Indiana, maintains its principal office and place of business at Evansville, Indiana, and a satellite facility at Loogootee, Indiana, where it is engaged in the manufacture, sale, and distribution of dental chairs and equipment and related products.

During 1972, Respondent, in the course and conduct of its business operations, purchased and delivered to its above-named locations goods and materials valued in excess of $50,000, which were transported to them directly from States other than the State of Indiana, and also manufactured, sold, and delivered products

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7/ In view of our determination, it is unnecessary to consider General Counsel's motion to strike.

valued in excess of $50,000, which were shipped from the Evansville and Loogootee locations directly to States other than the State of Indiana.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organization Involved.

International Union of Electrical, Radio and Machine Workers, a/w AFL--CIO--CLC, is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

A. The Representation Proceeding

1. The unit

The following employees of the Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All production and maintenance employees of the Respondent at its Evansville and Loogootee establishments, but excluding all office clerical employees, all professional employees, all guards and all supervisors as defined in the Act.

2. The certification

On December 14, 1972, a majority of the employees of Respondent in said unit, in a secret ballot election conducted under the supervision of the Regional Director for Region 25, designated the Union as their representative for the purpose of collective

bargaining with the Respondent. The Union was certified as the collective-bargaining representative of the employees in said unit on February 7, 1973, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. The Request To Bargain and Respondent's Refusal

Commencing on or about February 13, 1973, and at all times thereafter, the Union has requested the Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about February 14, 1973, and continuing at all times thereafter to date, the Respondent has refused and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that the Respondent has, since February 14, 1973, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See Mar-Jac Poultry Company, Inc., 136 NLRB 785; Commerce Company d/b/a Lamar Hotel, 140 NLRB 226, 229, enfd. 328 F. 2d 600 (C. A. 5), cert. denied 379 U.S. 817; Burnett Construction Company, 149 NLRB 1419, 1421, enfd. 350 F. 2d 57 (C. A. 10).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

Conclusions of Law

1. Chayes Virginia Corporation, a wholly owned subsidiary of BCC Industries, Inc., is an employer engaged in commerce within the meaning of Section 2(5) and (7) of the Act.

2. International Union of Electrical, Radio and Machine Workers, a/w AFL--CIO--CLC, is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees of the Respondent at its Evansville and Loogootee establishments, but excluding

all office clerical employees, all professional employees, all guards and all supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since February 7, 1973, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about February 14, 1973, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed to them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Respondent, Chayes Virginia Corporation, a wholly owned subsidiary of BCC Industries, Inc., Evansville, Indiana, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with International Union of Electrical, Radio and Machine Workers, a/w AFL--CIO--CLC, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All production and maintenance employees of the Respondent at its Evansville and Loogootee establishments, but excluding all office clerical employees, all professional employees, all guards and all supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Evansville and Loogootee, Indiana, facilities copies of the attached notice marked, "Appendix."[8/]

8/ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF

Copies of said notice, on forms provided by the Regional Director for Region 25 after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 25, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D. C., November 6, 1973.

Edward B. Miller, Chairman

John H. Fanning, Member

John A. Penello, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

8/ (Continued) APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with International Union of Electrical, Radio and Machine Workers, a/w AFL--CIO--CLC, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

> All production and maintenance employees of the Respondent at its Evansville and Loogootee establishments, but excluding all office clerical employees, all professional employees, all guards and all supervisors as defined in the Act.

CHAYES VIRGINIA CORPORATION
(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 615 ISTA Center, 150 West Market Street, Indianapolis, Indiana 46204, Telephone 317--633--8921.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-FIVE

CHAYES VIRGINIA CORP., a wholly owned subsidiary of BCC INDUSTRIES, INC.

Employer

and

Case No. 25-RC-5155

INTERNATIONAL UNION OF ELECTRICAL RADIO AND MACHINE WORKERS, AFL-CIO-CLC

Petitioner

SUPPLEMENTAL DECISION AND ORDER AND CERTIFICATION OF REPRESENTATIVE

Pursuant to a petition filed on October 2, 1972 and a Decision and Direction of Election issued by the undersigned, an election was conducted on December 14, 1972 among certain employees[1/] of the above named Employer to determine whether they desire to be represented by the Petitioner for the purpose of collective bargaining. The Tally of Ballots served upon the parties at the conclusions of the election shows the following results:

Approximate number of eligible voters	80
Void ballots	1
Votes Cast for the Petitioner	34

1/ The appropriate unit was found to be: "All production and maintenance employees of the Employer at its Evansville and Loogoote, Indiana establishments: BUT EXCLUDING all office clerical employees, all professional employees, all guards and all supervisors as defined in the Act.

Votes Cast against the Petitioner	31
Valid Votes counted	65
Challenged Ballots	1
Valid Votes Counted Plus Challenged Ballots	66

The Challenged Ballot is not sufficient in number to affect the results of the election. On December 20, 1972, the Employer filed timely Objections to the election.[2/] Pursuant to Section 102.69 of the Rules and Regulations of the National Labor Relations Board an investigation of the issues raised by the Objections was conducted under the direction and supervision of the undersigned who after considering the results thereof, reports thereon as follows:

THE OBJECTIONS[3/]

The Employer's Objections read as follows:

Comes now the Employer in the above case and files its Objections to the Conduct of the Election and/or Conduct Affecting Results of the Election held herein on the 14th day of December, 1972, as follows:

2/ All parties were requested to furnish and have furnished various evidence in support of their respective positions in regard to the Objections.

3/ Attached hereto as Exhibit 16-75 is Petitioner literature distributed to employees and as Exhibits 1-15, Employer literature similarly distributed. All Exhibits issued on or about the dates they bear. Set forth in parenthesis after each Exhibit number is the number designation assigned to them by the Employer and used in the Employer's Objections. (The Employer made no numerical designation of Employer published literature)

1. That Petitioner, close in time to the date of the election held herein, conducted an illegal polling of Employer's employees, in that it asked them through a planned telephone campaign how they were going to vote in the election.
2. Petitioner engaged in an unlawful campaign of threats, intimidation and coercion among Employer's employees in that during the pre-election period it informed certain employees of Employer that their jobs were in jeopardy, and that if they failed to vote for the Petitioner they would be laid off, and/or if the Union (Petitioner) came in and they had not voted for Petitioner they would lose their jobs because of their physical disabilities.
3. Throughout its pre-election campaign at Employer the Petitioner indicated to Employer's employees that were it designated as their representative these employees would automatically obtain substantial wage and fringe benefit increases in excess of those allowed by federal guidelines, thereby indicating that an automatic exception to the law would be made.
4. During the course of the pre-election campaign Petitioner obtained without Employer's permission, certain financial documents which were in turn misrepresented in a series of handbills distributed shortly prior to the election, to the effect that Employer was making incredible and unbelievable profits, ignoring certain other aspects of the information it "had taken" from Employer, which would have made the figures disclosed more meaningful.

5. Throughout the course of the campaign and in a series of handbills Petitioner indicated to Employer's employees that were they to designate Petitioner as their representative they would not have to pay any form of Union obligation until such time as the Petitioner was designated as the employees' bargaining representative. This amounted to an unlawful inducement to Employer's employees to designate Petitioner as their representative.
6. In handbills distributed to Employer's employees, the Petitioner indicated that as members of a local of Petitioner the employees retained complete control over their own decisions, neglecting to inform these employees that they have no right to strike without approval of the International Union, as set forth in Article XIV of the Constitution of Petitioner.
7. In a series of handbills attached hereto as exhibits 1 through 52 the Petitioner engaged in a campaign of misrepresentations so extensive as to substantially interfere with the Section 7 and 9 rights of Employer's employees in that they could not make a well informed choice of representative because these misrepresentations related to substantial and material issues of fact, among which are the following, as shown by the handbills annexed hereto:

   (a) Exhibit 2 is a misrepresentation of the law and also indicates that Employer was stealing money from its employees.

   (b) Exhibit 4 indicates that all religious sects back the Union, thereby interfering with the constitutional rights of Employer's employees.

(c) Exhibit 9 indicates that Employer was illegally discharging its employees.

(d) Exhibit 13, wherein Petitioner misrepresents the profit obtained by Employer when it sells a dental chair.

(e) Exhibit 23, wherein the Petitioner makes substantial misrepresentations about the bonus available to supervisory employees of Employer.

(f) Exhibit 25, wherein the Petitioner misrepresents the position taken by Employer in the representation matter involved in this case, in that it indicates Employer was delaying an election. Also see Exhibit 30 on this issue.

(g) Exhibits 28 and 29, which would indicate that employees control their local, failing to mention the fact that the International Union has a great deal of control over local matters.

(h) Exhibit 34 shows Petitioner's unlawful fee waiver.

(i) Exhibit 38, in which Petitioner misrepresents Employer's profit position as it relates to some of the largest corporations in the United States. Also see Exhibits 39 through 41.

(j) Exhibit 43, wherein the Petitioner states that Employers cannot do anything with respect to economic benefits during a Union campaign.

(k) Exhibit 45, falsely indicating to Employer's employees that all religious and famous Americans support the Union and inferring that the federal government supports the Union.

(l) Exhibit 52, which Employer believes was not in fact prepared by I. U. E. members at Indian Industries, by by a representative of Petitioner.

8. The 52 handbills attached hereto, when fairly read, would indicate that Petitioner stepped out of bounds during this election and that when combined with the activity referred to in the Objections set out above, clearly indicate the lack of the atmosphere necessary to reasoned employee choices. The above-mentioned conduct, the conduct contained in this objection, and other conduct clearly shows that the election held herein should be set aside.

9. WHEREFORE, for the reasons set out above and other reasons, Employer asks that the election held herein be set aside; that in light of the filing of these objections the Board investigate fully and completely all conduct engaged in by the Petitioner during the election campaign held herein; that the election be either set aside or a hearing involving substantial and material issues of fact be held and for all further and proper relief in the premises.

Objection 1

In support of this objection the Employer proffers a statement from one employee stating that prior to the election he was called at his home by an individual claiming to be an agent of the Petitioner and asked how he intended to vote in the forthcoming Representation Election. The Petitioner denies this conduct. Assuming that the conduct did occur it is not objectionable. Springfield Discount Inc., d/b/a J. C. Penny Food Department,

195 NLRB No. 157, (enf'd. 7th Cir., November 30, 1972.) Additionally the Employer has adduced no evidence the caller was in fact an agent of Petitioner. Accordingly, Objection 1 is overruled.

Objection 2

On December 20, the undersigned by letter requested the Employer to "submit all of your evidence (statements, affidavits, letters, handbills, etc.) in support of said Objections to this office on or before the close of business December 27, 1972." The Employer submitted certain affidavits of A, C, M, N, and O,[4] on December 26, 1972, and requested of a Board agent[5] an extension of time to January 10, 1973, "as a final date in which to file material in support of our Objections." After that time the Board agent interrogated the affiants and other witnesses proffered by the parties on January 16, and 17, also at this time the Employer submitted affidavits of its President Edward Fritz and Operations Manager William Sherbrooke, which contained only hearsay testimony with regard to Objection 2. It also proffered witnesses as to Objection 2, employees A and C for whom it had previously submitted affidavits and who it stated would support employees D, E, F, and G who had executed no statements or affidavits but the Employer nevertheless proffered them as witnesses supporting the case.

The Evidence of A

In the original affidavit submitted by the Employer on or about December 26, A stated:

4/ The statements of M, N, and O did not relate to Objection 2.

5/ Lindsley Industries of Sarasota, Inc., 199 NLRB No. 83.

> "[Employee B] called me a 'chicken' if I would not vote for the Union. I was riding to work with [her] before the election. [She] talked to me about the Union during these rides. [She] became very angry with me at these times. She was 'fussing' and yelling for a long time.
>
> [She] said that all of the deaf people would be laid off if the Union lost the election. I understood [her] meaning from reading her lips partly, and partly from the signs she made."

Essentially B denies A's testimony in relevant part. When interviewed by the Board agent on January 16, 1973, "A" testified:

> "I know 'B'. She never told me she would hurt me. I talked with 'B' about the Union frequently. She told me that the Union was good and paid lots of money.
>
> 'B' never discussed with me how I would vote. But 'B' saw that I did not take the Union literature, so she knew I was against the Union . . . 'B' did tell me to vote for the Union. 'B' never told me I would lose my job by voting no. She never told me my vote would affect my job in anyway.
>
> 'B' told me I might be laid off, but she did not say the Union vote had anything to do with it. The lay-off had nothing to do with the Union.
>
> I did not say that [B] said the deaf people would be laid off if the Union lost. 'B' did not tell me I would lose my job if the Union won."

The Employer's Operations Manager Sherbrooke states:

> "Regarding [A] some weeks prior to the election I had a written conversation with [her] at which time she told me [B] had told her that if they did not vote for the Union, all the deaf people would be laid off . . . I assured her not to worry that such was not the case."

On its face the remark B attributes to A is a prediction and not a threat since the statement "deaf people would be laid off if the Petitioner lost the election" deals with a matter, which on its fact, lies outside the power of Petitioner to control, particularly if it lost the election. At worst, therefore it was a misrepresentation which if true, Sherbrooke on behalf of the Employer effectively rebutted and negated. Additionally A's expressed denial in her affidavit of January 16, that B said "deaf people would be laid off if the Union lost" invalidates any prior contrary testimony and leaves this aspect of the Objections bereft of probative evidentiary support. Finally, the Employer has not submitted and investigation has not revealed any evidence B was in any way an agent of Petitioner[6/] for whose conduct Petitioner is responsible.[7/]

6/ The fact B subsequently served as union observer is irrelevant. McFarling Bros., Midstate Poultry & Egg Co.; 123 NLRB 1384.

7/ The determination of the validity of Objections based on conduct by strangers to the proceeding and rank-and-file employees stands on an entirely different footing and is judged by entirely different criteria than the conduct of the parties and their agents. Allied Plywood Corp., 122 NLRB 959. Apart from the fundamental rule that a party is normally held responsible only for his own and his agent's acts, there would be little finality to

The Statement of C and E

C's December 26 statement stated:

> "E told me that 'other people' were forcing him to vote for the Union, but he did not say who. No one tried to force me."

7/ (Continued) elections if misconduct by rank-and-file employees anonymous persons and other strangers to the proceeding (any and all of whom can with equal facility threaten reprisals and promise benefits) were given the same effect as the acts of the parties and their agents. Orleans Mfg. Co., 120 NLRB 630. Additionally the simple fact is that employees do not give the same significance and weight to the remarks and conduct of their fellow employees and strangers as they do to their Employer or collective bargaining representative. Orleans Mfg. Co., supra. Accordingly, the Board has frequently recognized that "vehement advocacy on the part of rank-and-file employees [that would constitute misconduct if engaged in by a party or his agent] does not warrant setting an election aside where the advocates do not resort to violence in attempting to obtain converts to their convictions, and the partisan activity is not part of any concerted effort to coerce or intimidate employees."; A. Werman & Sons, Inc., 106 NLRB 1215, 1216; White's Uvalde Mines, 110 NLRB 278; cf. Diamond State Poultry Co., Inc., 107 NLRB 3; or "unless the conduct is so aggravated as to create a general atmosphere of fear and reprisal rendering a free expression of choice of representatives impossible." Tampa Crown Distributors, Inc., 118 NLRB 1420, 1421. [Underscoring supplied]

Applying the nonagent or stranger criteria and assuming arguendo the incidents involving A and U occurred, it does not appear that these alleged incidents can be equated with violence or constitute an integral part of a concerted effort to intimidate employees. Nor can it be fairly said that they created such a general atmosphere of fear and reprisal as to render a fair election impossible. Accordingly, even if contrary to A's statement B engaged in the conduct complained of and the unidentified fellow employee engaged in the conduct alleged, it would not constitute cause to set aside the election absent a showing of agency.

On January 16, the Board agent interviewed E who in his affidavit to the Board agent gave testimony as follows:

> "No one made me vote one way or the other. No one told me I would loose (sic) my job or be laid off for voting one way or the other. No one ever talked to me about voting for the Union."[8/]

Since C's statement is hearsay of an alleged declaration by E which was not in fact borne out by E it obviously is incompetent and cannot support Objection II.

Affidavits of D and F

Although the Employer proffered no evidence which would suggest their testimony was relevant, the Board agent nevertheless at the request of the Employer interviewed D, F, and G, when the agent was conducting the field investigation on January 16 and 17, whom the Employer proffered in support of its Objection 2. None gave the slightest support to the Employer's contention that Petitioner or anyone else engaged in an unlawful campaign of threats, intimidation and coercion or engaged in the other conduct described in Objection 2.

Statements of P, Q, R, S, T and U

During the field investigation at Evansville, Indiana, on January 16 and 17, the Employer requested the Board agent to interview witnesses concerning the content and/or effect of Petitioner campaign literature on them. This the agent refused to do, simultaneously advising the Employer it could submit statements from

8/ E like A, C, D, F and G, is a deaf mute.

employees embodying any testimony it desired to offer on this subject. Following the completion of the field examination in Evansville, the Employer submitted to the Regional Office six (6) signed statements of employees P, Q, R, S, T and U. The statement of R dealt exclusively with describing the content or alleged content of Petitioner's literature; the statements of P, Q, S, T and U dealt with the contents of Petitioner's literature and Objection 2. To the extent the statements deal with Petitioner's literature they will be treated as an offer of proof. As such, the offers are rejected for the reason Petitioner's literature (which is attached) speaks for itself. To the extent the statements deal with Objection 2, they are rejected as untimely,[9/] having been

9/ A further reason for rejecting such proffered affidavits is that insofar as they refer to Objection 2, the affidavits are in all cases, except as noted below, rank hearsay; and indeed are for the most part characterized as "hearsay" and/or "gossip" in haec verba by the affiants. Additionally they are obviously conclusionary, and not evidentiary as reflected by the typical statement of P:

> "About the only thing I know about that (sic) happened in the shop during the election is hearsay about the fact that [B] was 'on' [A] about supporting the union. [B] wanted [A] to vote for the union. About [B] being on [A] this was what you might call gossip in the shop since everyone knew about it."

Additionally the misconduct alleged in the January 18 affidavits all refer misconduct adduced to B or U whose own affidavits do not establish such conduct. The only statement relating to Objection 2 other than hearsay contained in the January 18 statements is the assertion of U:

> "On one occasion in the restroom I was told by a fellow employee who is no longer with the company that if I did not sign a card or support the union I might have something done to my car or my house and I was very concerned about this because I live alone."

submitted (1) after the completion of the field investigation and (2) not only beyond the date established by the undersigned for the completion of investigation, but also beyond the date the Employer itself set as the "final date in which to file material in support of our Objections" (supra) and also (3) beyond the tender of evidence made by the Employer's President Fritz at the outset of the January 16 - 17 field investigation, at which time the investigating examiner included inter alia in Fritz's statement a detailed description of the proof he had to offer on each objection concerning Objection 2. Fritz made and executed the following statement in the presence and without objection by Employer Counsel:

> Regarding Objection 2, I proffer A, C, D, E, F and G and Sherbrooke.[10] I have no other evidence to offer in support of this Objection.

Accordingly Objection 2 is overruled.

9/ (Continued) The statement is obviously incompetent to establish objectionable conduct binding on Petitioner since it not only does not establish the "fellow employees" agency relationship to Petitioner it does not establish the individuals name's (see note 7 supra). The statement was submitted by the Employer's counsel who is well familiar with the evidentiary requirements to establish objectionable conduct. Thus apart from submitting the statement belatedly, the Employer submitted a statement totally inadequate to establish objectionable conduct or suggest objectionable conduct fairly attributable to Petitioner. For the above stated reasons as well as their belated submission, the statement of P, Q, R, S, T and U do not establish the Employers Objection 2.

10/ As above noted Sherbrookes affidavit insofar as it related to Objection 2 was exclusively hearsay.

Objection 3

In support of this objection the Employer relies upon the body of the Petitioner's literature (Exhibits 16-75) which it contends "indicates" that the Petitioner is promising automatic raises and exemption from federal wage-price control guidelines. A careful examination of the documents reveals no such promise, more than the typical campaign rhetoric easily evaluated by employees. Hollywood Ceramics Company, 140 NLRB 221.

With regard to the wage-price guidelines, the literature does not reveal any misrepresentation of fact. Additionally the statements concerning the Pay Board regulations do not involve matters peculiarly within the Petitioners knowledge and increases above the 5.5% level have been of sufficient number and well publicized to the point that employees (a) are in a position to know the truth of the fact asserted and/or (b) possess independent knowledge with which to evaluate the statements.

Accordingly Objection 3 is overruled.

Objection 4

The Employer bases this objection upon two points, (1) that the financial figures circulated by the Petitioner in Exhibits 66, 67, 68 and 69 were untrue and; (2) that they were obtained illegally. Regarding (1), the Employer refused to provide a financial statement, accordingly no conclusion that the Petitioner misrepresented fact can be made, and the Employer had, as set forth under Objections 6, 7 and 8 below, ample time to correct any material it considered erroneous. As to (2), the source of the uncontradicted and hence presumably truthful information is irrelevant.

Accordingly, Objection 4 is overruled.

Objection 5

The Employer bases this objection upon Exhibit 53, which it contends makes an illegal promise of fee waiver during the election campaign. The Board has repeatedly held that such waiver is not objectionable. DIT-MCO Incorporated, 163 NLRB 1019.

Accordingly, Objection 5 is overruled.

Objections 6, 7 and 8 and [9]

Objections 6 7 and 8 are all based on various union communications to the employees involved herein. [11] Employer specifically cites Exhibits 16-75 as grounds for its objections. I have carefully read Petitioner's literature and find that none of the material is objectionable either as to its content or its timing particularly in view of the fact that the only cited material issued so close to the election (Exhibits 70-73) as to possibly preclude response by the Employer contained information which had previously been stated by the Petitioner, (Exhibits 66-69). Thus, if the Employer had deemed these matters to be material misrepresentations worthy of comment or requiring reply, he had ample time to reply. Further, this is the type of material that employees have been long held capable of readily evaluating. Hollywood Ceramics, 140 NLRB 221; Gong Bell Mfg. Co., 114 NLRB 342; Ralston Purina, 147 NLRB 506. [12]

11/ The Employer's contention that witnesses should be examined for their subjective understanding of the Petitioner's literature is hereby rejected. Pinkerton's National Detective Agency, Inc., 124 NLRB 1076, 1077 fn. 3; The Lord Baltimore Press Division of International Paper Company, 168 NLRB 661, fn. 7.

12/ Indeed the literature complained of in Objections 3 and 4 is unobjectionable under the Ralston Purina rule, supra, as well as for the reasons above stated.

Accordingly, Objections 6, 7, and 8 are overruled, as is [9] inasmuch as the Employer proffered no evidence, nor was any adduced to support the allegation of "other reasons" set forth in its "Wherefore" statement.

DECISION AND ORDER

For the reasons herein above set forth it is ordered that the Employer's Objections be and hereby are overruled in their entirety.

CERTIFICATION OF REPRESENTATIVE

IT IS HEREBY certified that a majority of the valid ballots have been cast for International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC, and that pursuant to Section 9(a) of the National Labor Relations Act, as amended, the said labor organization is the exclusive representative of all employees in the unit found appropriate herein for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment and other conditions of employment.

DATED AT Indianapolis, Indiana this 7th day of February 1973.

/s/ Wm. T. Little
Wm. T. Little, Regional Director
National Labor Relations Board
6th Floor, ISTA Center
150 West Market Street
Indianapolis, Indiana 46204

Appendix C

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-FIVE

CHAYES VIRGINIA CORPORATION,
A WHOLLY OWNED SUBSIDIARY OF
BCC INDUSTRIES, INC.,

Respondent

-vs-

Case No.
25-CA-5606

INTERNATIONAL UNION OF ELECTRICAL,
RADIO AND MACHINE WORKERS, a/w
AFL-CIO-CLC,

Charging Party

ANSWER TO COMPLAINT

Respondent herewith files its Answer to the Complaint filed herein as follows:

1. Respondent admits the allegations of rhetorical paragraph 1. of the Complaint.

2. Respondent admits the allegations of rhetorical paragraph 2(a), (b), (c), (d) and (e) of the Complaint.

3. Respondent admits the allegations of rhetorical paragraph 3. of the Complaint.

4. Respondent admits the allegations of rhetorical paragraph 4. of the Complaint.

5. (a) Respondent admits the allegations of rhetorical paragraph 5. (a) of the Complaint.

(b) Respondent admits the facts contained in rhetorical paragraph 5. (b) of the Complaint, but would affirmatively deny any legal intendment or allegation to the effect that the Union lawfully represents its employees or that the Union was lawfully designated as their bargaining agent for any purpose; and further

Respondent would allege that any form of certification of the results in a companion representation case known on the records of the Board as Case No. 25-RC-5155 was unlawfully issued and is void and of no legal effect upon Respondent because:

(1) As shown by Exhibits A through D annexed hereto, Respondent was denied an explicated decision from the Board on its exceptions to the Board's Regional Director's Supplemental Decision and Order and Certification of Representative, and thereby denied due process of law.

(2) The Board erred in refusing to hold a hearing on Respondent's objections to the election filed in Case No. 25-RC-5155 in that said objections raised substantial and material issues of fact requiring a hearing, as further set forth in Exhibit E annexed, being Respondent's Exceptions and Brief to the Regional Director's Supplemental Decision and Order and Certification of Representative; and as further shown by Respondent's Objections as set out in Exhibit F annexed, 6 affidavits in support of said Objections annexed as Exhibit G, 5 affidavits annexed as Exhibit H, the affidavit of William E. Sherbrooke annexed as Exhibit I with Exhibits A through H attached, with Union handbills annexed numbered 1 through 52, and the affidavit of William E. Fritz annexed as Exhibit J, referring to the Union handbills numbered 1 through 52 annexed to Exhibit I.

(3) The election held herein should have been set aside as shown by Exhibits E through I annexed hereto.

(c) Respondent denies the allegations contained in rhetorical paragraph 5. (c), and for the reasons stated in paragraph 5(b) of this Answer, denies any legal intendments or

allegations that it has violated the Act or that the Union is the lawful representative of its employees for the purpose of collective bargaining within the meaning of Section 8(a)(5) and (d) of the Act.

(d) Respondent admits the facts contained in rhetorical paragraph 5. (d), but for the reasons stated in paragraph 5. (b) of this Answer, denies any legal intendments or allegations that it has violated the Act or that the Union is the lawful representative of its employees for the purpose of collective bargaining within the meaning of Section 8(a)(5) or (d) of the Act.

(e) Respondent admits the facts contained in rhetorical paragraph 5. (e), but for the reasons stated in paragraph 5. (b) of this Answer, denies any legal intendments or allegations that it has violated the Act or that the Union is the lawful representative of its employees for the purpose of collective bargaining within the meaning of Section 8(a)(5) or (d) of the Act.

(f) Respondent admits the facts contained in rhetorical paragraph 5. (f), but for the reasons stated in paragraph 5. (b) of this Answer, denies any legal intendments or allegations that it has violated the Act or that the Union is the lawful representative of its employees for the purpose of collective bargaining within the meaning of Section 8(a)(5) or (d) of the Act.

6. Respondent denies the allegations of rhetorical paragraph 6. of the Complaint.

7. Respondent denies the allegations of rhetorical paragraph 7. of the Complaint.

8. Respondent denies the allegations of rhetorical paragraph 8. of the Complaint.

9. Respondent denies the allegations of rhetorical paragraph 9. of the Complaint.

WHEREFORE, Respondent prays that the Complaint herein be dismissed in its entirety, and that findings be entered in favor of the Respondent, and for all other proper relief in the premises.

Respectfully submitted,
KAHN, DEES, DONOVAN & KAHN

By /s/ Joseph A. Yocum
Joseph A. Yocum
Attorneys for Respondent

June 29, 1973
Evansville, Indiana

KAHN, DEES, DONOVAN & KAHN
305 Union Federal Building
Evansville, Indiana 47708

STATE OF INDIANA)
) SS:
VANDERBURGH CTY)

STATEMENT

My name is Beatrice Anderson and I am employed at the Virginia corporation in Evansville, Indiana and I make this statement as my free and voluntary act with the underlanding that anything I say or do not say will have no effect on my job with the company.

1. I make this statement with reference to events relating to the NLRB election held at the company on December 14, 1972 about which I have the following to relate.

2. About the only thing I know about that happened in the shop during the election is hearsay about the fact that Donna Head was "on" Charlotte Grey about supporting the union. Donna wanted Charlotte to vote for the union. About Doona being on Charlotte this was what you might call gossip in the shop since about everyone knew about it.

I have read the foregoing statement and it is true to the best of my knowledge and belief.

Beatrice Anderson

EXHIBIT G

STATE OF IDDIANA)
) SS: STATEMENT
VANDERBURGH CTY)

My name is Edna Morris and I am employed at the Virginia corporation in Evansville, Indiana and I make this statement as my free and voluntary act with the understandin g that anything I say on do not say will have any effect on my job at the company.

1. I make this statement with reference to events taking place before the NLRB election held at the company on December 14, 1972 about which I have the following to report.

2. I do not know directly, but it was hearsay in the plant or at least there was alot of talk about it that Donna Head was placing alot of pressure on one of the deaf girls to sign a union card and this was the reason she was missing work. At leat I heard this at lunch time when people were talking about it.

3. Earlier I do know that one girl Dorothy MacClear ~~was transferred because~~ changed when she went the people in her department were placing so much pressure on her to support the union. By this I mean they would be critical of her work and so on. ~~She was transferred to our department.~~

4. It was talk in the shop at the beginning of the union campaign that employees were going to get a $1.00 an hour raise if the union came in and I do remember that in the last union handbill it looked like were going to get big raises from the wage scales set out in the handbill from another company that had a contract with the union.

I have read the foregoing statement and it is true to the best of my knowledge and belief.

Edna Morris

STATE OF INDIANA)
) SS: STATEMENT
VANDERBURGH CTY)

My name is Delores M. Smith and I am employed at the Virginia corporation in Evansville, Indiana and I make this statement as my free and voluntary act with the understanding that anything I say or do not say will have no effect on my job at the company.

1. I make this statement with reference to the events taking place before the NLRB election at the company on December 14, 1972 about which I have the following to state.

2. About all I rembaber about the election campaighn is the fact that the union put out alost of materials in its handbills, among some of the things in these handbills were the following:

a. One handbill said you might lose your pension if the union lost the election, but I have never known of the company going back on its promise on something like that.

b. I did understand from the handbills that no one would have to pay any money to the union if it won the election.

c. I have a sister that works at Indian Industries and when the handbill about Indian came out I called my sister and asked her about what she made and she had five years seniority at Indiana and she made $2.38 an hour putting feathers on arrows. This was less than anyone set out in the union handbill and so I figured what it said was not true.

d. There was alot in the handbills about the big bonuses the foremen were getting.

I have read the foregoing statement and it is true to the best of my knowledge and belief.

Delores M. Smith

STATE OF INDIANA)
)SS: STATEMENT
VANDERBURGH CTY)

My name is Lucille Kruse and I am employed at the Virginia corporation in Evansville, Indiana and I make this statement as my free and voluntary act with the understanding that anything I say oo do not say will have no effect on my job with the company.

1. I make this statement with reference to events relating to the NLRB election held at the companynon December 14, 1972 about which I have the following to relate.

2. About the only talk in the shop before the election that I know about is hearsay on the fact that Donna Head was on the little deaf girl to support the union by digning a card. This was shop talk.

3. There were manny things in the union handbills that I read that I remember and they impressed me, some of these were:

a. You would not have to pay anything to the union if it came in.

b. The foremen were getting big bonuses and some employees said why should they get all these bonuses when we the workers are wanting more money.

c. One union handbill said we could lose our pension plan if we didn't get the union in at the company.

d. I thought the union probably had some support from religious leaders since they put out a big booklet with quotes from some of them, including Billy Graham.

e. Everyone was talking about the big company profits set out in the handbills and the price the company was getting for its dental chairs.

f. One handbille from Indiana Industries employees showed some wage rates at that company and it looked like they wee all getting big money there.

I have read the foregoing statement add it is true to the best of my knowledge and belief.

Lucille Kruse

STATE OF INDIANA)
) SS: STATEMENT
VANDERBURGH CTY)

My name is Anna Felton and I am employed at the Virginia corporation in Evansville, Indiana and I make this statement as my free and voluntary act with the understanding that anything I say or do not say will have no effect on my job with the company.

1. I make this statement with reference to events occuring just prior to the election held at the company on December 14, 1972 by the NLRB about which I have the following to say.

2. One of the strong union supporters named Donna did place alot of pressure on one of rhe deaf mutes emplo ed at the company, since the deaf girl would write on slots of paper about what was going on. Another girl Dorothy MacClear had to move out of her department during breaks and lunch because of the pressure being placed on her. When she came to our place for breaks and lunch she would talk about how she was told the air would be let out of herfires or they might be slashed or that her house might be set on fire and so on by the union people. I guess they were trying to get her to go unio n by signing a union card.

3. Many things were said in the union handbills about all sorts of things, but somethings that I remember were the following:

a. If the union won the election you would not have to pay any initiation fees to the union.

b. There was much talk about the bonuses the foremen were supposed to be getting add this turned into alot of talk about the fact certain employees who were not supervisors were getting secret bonuses from the company. There was alot of talk about this.

c. The last handbill put out by the union showed the wages at Indian Industries and from the looks of the handbill it would mean that the employeees here at Virginia would be getting very large wage orcreases, at least it looked that way.

d. The handbills also said something about losing our pensions if we did not vote the union in here.

e. The union made it look like to alot of the young people working out in the plant that they were going to get the same king of wages that the big companies in Evansville pay like Whirlpool, but I took all of this with a grain of salt. I did not see how this could be done.

I have read the foregoing statement and it is true to the best of my knowledge and belief.

Anna Felton

STATE OF INDIANA)
) SS: STATEMENT
VANDERBURGH CTY)

My name is Dorothy McAlear and I am employed at the Virginia corporation in Evansville, Indiana and I make this statement as my free and voluntary act and understand that anything I say or refuse to say will have no effect on my job at the company.

1. I make this statement with reference to events occuring just before the NLRB election held at the company on December 14, 1972 about which I have the following to say.

2. On one occassion in the restroom I was told by a fellow employee who is no longer with the company that if I did not sign a card or support the union I might have something done to my car or my house and I was very concerned about this because I live alone. Another girl in my department informed me that she had been placed under alot of pressure too. I did not report this to the company because I wanted to try to get along and not cause any trouble.

3. The union put out alot of handbills during the period before the election, but I do remember some of the following things in them:

a. I think they used untrue reference to support by religious leaders particularly Dr. Billy Graham.

b. I remember the handbills said a great deal about the price of dental chairs without saying what was deducted from the costs.

c. I would also like to say that there was much talk about the bonuses certain formen were supposed to be getting.

d. I vagely remeber a reference to the fact that if the union did not get in we might lose our pension plan.

e/ I also rember some reference to the wages the employees at Indiana archery were getting which looked like they were really highly paid people.

4. I would also like to say that people in favor of the union pushed getting union carxs signed on working time and I do not believe they were supposed to be doing this.

I have read the foregoing statement and it is true to the best of my knowledge and belief.

Dorothy McAlear

State of Indiana } S.S.
County of Vanderburg }

Affidavit

I, David T. Berning, of 1908 Tree Lane Drive, Evansville, being first duly sworn, depose and say:

That I am now employed at the Sunbeam Bakery, Evansville, but I was employed at the Virginia Corporation, Evansville Indiana from June 18, 1972 until December 18, 1972 as a leadman in the grinding department.

My father told me one day in the week before the election that a Mr. Snodgrass called for me when I was out. He left no message, but said he would see me at the gate in the morning.

I have been advised by Frank R. Hahn that he is an attorney representing my former employer in objecting to the recent election held by the NLRB at the Virginia Corporation. I know that I do not have to talk to him. I give this statement under oath and of my own free will without coercion or promise of benefit.

Further affiant sayeth not.

David T. Berning

Subscribed and sworn to before me this 20th day of December, 1972

Frank R. Hahn
NOTARY

My Commission expires
October 25, 1972

EXHIBIT H

State of Indiana } s.s.
County of Vanderburgh }

Affidavit

I, Geoffrey L. Beebner, of 1511 South Green River Road, Evansville, Indiana, being first duly sworn, depose and say:

That I am employed at the Virginia Corporation Evansville Indiana as an assembly line worker. I have been here about six months, that is, since the early part of June, 1972. GB 12/20/72

Mr. Snodgrass called my ~~home~~ house and wanted to talk to me. This was the week before the election and either on Tuesday and Wednesday or on Wednesday and Thursday. He called twice. I was not at home; My Mother took the calls. I never spoke with him by phone myself. My Mother told me that he had called.

I am unaware of any coersion with regard to the election from either the Union or from my employer. There was nothing beyond unfriendliness, as far as I am aware of that occurred between the employees because they supported the Union or opposed it.

I have been advised by Frank R. Hahn that he is an attorney representing my employer in objecting to the recent election conducted in this plant by the N.L.R.B. He has told me that I do not have to give him a statement. I give this statement voluntarily, without threat or promise of benefit, and under oath. It is true to the best of my knowledge and belief. Further affiant sayeth not.

Geoffrey L. Beebner

Subscribed and sworn to before me this 20th Day of December 1972

My Commission expires October 25, 1976

Frank R. Hahn
NOTARY PUBLIC

State of Indiana } s.s.
County of Vanderburgh }

Affidavit

I, Walter Bass, being first duly sworn, depose and say:

My address is Rural Route 3, Box 432 Newburg, Indiana 47630. I am employed at the Virginia Corporation, Evansville Indiana. I have been here since June of 1972. Earlier, I worked here from June 1970 until April, 1972. During the spring of 1972, I was employed elsewhere, and I returned to this job when I was laid off. I am a tool-maker.

I was not pressured to vote either way in the recent election, but I got a telephone call before the election, on either the 11th or 12th of December 1972, at about 7:10 p.m. I remember that I was trying to get something done, and it peeved me. The caller said he was Ray Snodgrass. He wanted to know how I felt about the Union. My answer to him was that I did not care to discuss it. Then we both hung up.

I do not know if anyone else was called and asked ~~this~~ WB 12/20/72 this question or not.

I have heard that there was a lot of talk among the employees about union ~~pressures~~ feelings WB 12/20/72, but I truthfully cannot say that I was involved in it. To my knowledge, nobody was pressured by either the company or the union.

Page 1
W.B. 12/20/72

I have voluntarily given this statement, under oath, to Frank R. Hahn, who identified himself as an attorney for my employer in an objection proceeding before the NLRB regarding the recent election at this plant. I understand that I am under no obligation to make a statement, and that I have the right to refuse to do so.

I have read over this statement. It is true and correct to the best of my knowledge and belief. It consists of the two sides of this one sheet of paper, hand written.

Further affiant sayeth not.

Walter Bass

Subscribed and sworn to before me this 20th Day of December, 1972.

Page 2
W-B 12/20/72

Frank R. Hahn

Notary Public

My commission expires
October 25, 1976

County of Vanderburgh } S.S.
State of Indiana }

Affidavit

With regard to the certain affidavit given by me this 20th Day of January, 1972, and last following above on this page, I Walter Bass further depose and say, being first duly sworn:

That I now recall that when Ray Snodgrass called me on the 11th or 12th of December, 1972, he said "We are calling some of the employees to find out their feeling about the Union", or words to that effect.

Further affiant sayeth not.

Walter Bass

Subscribed and sworn to before me this 20th day of December, 1972.

Frank R. Hahn

NOTARY PUBLIC

My commission expires
October 25, 1976

State of Indiana }
County of Vanderburgh } ss.

Affidavit

CAG 12-20-72

I, Charlotte Ann ~~Gray~~ Frey, of 1116 North Elliot, Evansville, Indiana, being first first duly sworn, depose and say:

That I am an employed by the Virginia Carparation. I am a drill press operator. I have worked here 5 months.

I am deaf, but I understand manual communication. I am giving this statement to Frank R. Hahn, through an interpreter, by means of manual communication.

CAG 12-20-72 ~~when~~ If Donna Head called me a "Chicken" I would not vote for the union. I was riding to work with Donna Head before the election. Donna talked to me about the union during these rides. Donna became very angry with me at these times. She was "fussing" and yelling for a long time.

Donna said that all of the deaf people would be laid off if the union lost the election. I understood Donna's meaning from reading her lips partly, and partly from the signs she made.

I no longer ride with Donna because she made me afraid because of the union.

Frank R. Hahn has told me that he is an attorney representing my employer in objecting to the recent election. He has told me that I do not have to give him a statement. I give this statement voluntarily and under oath, without coersion or promise of benefit. (This statement Continues on the reverse side of this page.)

I have read the foregoing statement, and it is true to the best of my knowledge and belief.

Charlotte Ann Grey

Subscribed and sworn to before me this 20th Day of December 1972.

Frank R. Haban

NOTARY PUBLIC

My Commission expires
October 25, 1976

State of Indiana } SS
County of Vanderburgh }

I, Marlaine K. Chase, being first duly sworn have served as interpreter in the taking of the foregoing affidavit. I certify that I am conversant in manual communications, and that the statements reduced to writing therein accurately represent the responses of Charlotte Ann Grey to questions of Frank R. Haban, all as interpreted by me

Marlaine K Chase

Subscribed and sworn to before me this 20th day of December, 1972

Frank R Hab

notary public

My Commission expires
October 25, 1972

State of Indiana
County of Vanderburgh } SS

Affidavit
R. W. B. 12-20-72

I, Richard Wesley Barnett, of RR 4, Boonville, Indiana, being first duly sworn, depose and say:

I am employed at the Virginia Corporation, Evansville, Indiana. I have been here since December 27, 1971. I am a hax and base worker.

I am deaf, and I am giving this statement through an interpreter in manual communication.

Mike Byrns told me that "other people" were forcing him to vote for the Union, but he did not say who. No one tried to force me.

I give this statement of my own free will. It is true to the best of my knowledge and belief. I have read it over and it is correct. I understand that I am under no obligation to give a statement, and that Frank Haban is an attorney representing my employer in objecting to the recent NLRB election.

Further affiant sayeth not.

Richard Wesley Barnett

Subscribed and sworn to before me this 20th Day of December 1972

Frank R. Haban

NOTARY

My Commission expires
Oct. 25, 1976

State of Indiana }
County of Vanderburgh } ss

I, Marlaine K. Chase, being first duly sworn, certify that the statement on the reverse side hereof was given by the affiant to Frank Hahn through me, as interpreter. I am conversant in manual communications, and the said statement is an accurate representation of the responses of the affiant to questions asked by Frank Hahn.

Marlaine K Chase

Subscribed and sworn to before me this 20th day of December, 1972

Frank R. Hahn
NOTARY

My Commission expires
October 25, 1976

STATE OF INDIANA)
)SS:
VANDERBURGH COUNTY)

AFFIDAVIT

William E. Sherbrooke, being duly sworn upon his oath, deposes and says as follows:

1. That he makes this affidavit in support of the Employer's Objections filed in Case No. 25-RC-5155, and also states that he is Operations Manager at employer.

2. That throughout the election campaign the Union, or the I.U.E. put out a series of handbills stating that various religious organizations favored unionization. In this respect I would refer the Board to Exhibits 4, 35 and 45 attached to the original Employer's Objections filed in this case, with particular reference to the quotation from Billy Graham contained in Exhibit 45 at page 11 of that exhibit.

3. I was somewhat surprised at the above matter, and because my curiousity was aroused I took the opportunity to write to Dr. Billy Graham concerning this matter and attached to this affidavit as Exhibit A is my letter of inquiry, and attached hereto as Exhibit B is the reply from Mr. T. W. Wilson, an associate of Dr. Billy Graham. I believe that these two exhibits speak for themselves, and they do indicate that the material used by the Union was taken out of context and was unauthorized. In other words, this was a subtle form of misrepresentation.

4. I might also take this opportunity to state that at no time did anyone from this company authorize Union access to the financial data contained in Exhibits 38, 39, 40, 41, 44, 45 and 51 attached to the Employer's original Objections filed herein.

EXHIBIT I

After much investigation, we can only conclude that this material in fact was stolen or taken from company files. The reason for saying this is the simple fact that the figures used by the Union, particularly with reference to profits, are work sheet figures which were at a later date adjusted downwards by $6,500.00. Because of this it is clear that the information was not obtained from published material of any kind, and in fact, the use of same was unauthorized and misleading, in the sense that the figures are incorrect. In addition, and although it may be of no legal consequence, I must take this opportunity to state that it would seem strange that the National Labor Relations Board would be interested in having employees represented by a labor union that would resort to tactics of this type and of the type mentioned in the above paragraphs with reference to religious backing for labor unions. It seems incredible to me that any type of relationship based on what amounts to theft and improper conduct would be of any value.

5. Along the same lines I would refer the Board to Exhibits 22, 28, 29 and almost every handbill put out by the Union, to the effect that local employees, meaning the employees of this employer, have complete control over all union matters. I have attached hereto as Exhibit C a copy of Article XIV of the I.U.E. Constitution, indicating that this is not the case, since all strikes must be approved by the International President or his designated representative.

6. I should also add that the employer has already submitted five affidavits to the National Labor Relations Board with reference to what we believe were threats and intimidation of our employees by Union representatives prior to the election. It would serve no

useful purpose for me to repeat in my affidavit what the affidavits already submitted contain, except to observe that we believe that were the employer given an opportunity to have a hearing on these Objections with the right to subpena witnesses, that the employer would be in a position to produce much more evidence, since it is our experience that the employees are somewhat frightened about any statements, and since we have no means at our disposal to compel them to give statements, we have experienced a great deal of difficulty in obtaining information. For example, we are advised that the Union conducted a very extensive poll of all of our employees by telephone shortly before the election. We are also advised that these conversations involved point-blank inquiries into how employees would vote and that this poll took place quite close to the election date. However, when we press employees as to giving statements we seem to get little cooperation. Therefore, upon the basis of what I know, we have a real need for a hearing to bring out all the facts in this case. This would be particularly true of our deaf employees, who have to work through an interpreter and are quite reluctant to relate anything.

7. I would like to set to rest, however, some erroneous data put out by the Union in several handbills, including but not limited to Exhibits 13, 15, 18, 20, 21, 32, 37 and 52 concerning the price we received for chairs. Our average price per chair is $1,181, not the amounts claimed in the Union handbills. This can be shown by the invoices attached hereto, and the cost of same which are shown on the accounting sheet, which is the first page of Exhibit D, consisting of the invoices referred to in the preceding.

8. Of course the handbills attached to the Employer's original Objections are filled with data relating to the fact that all the employees of the employer need to do is designate the I.U.E. as their collective bargaining agent and they would automatically gain substantial increases. However, it should be pointed out that at the time many of these handbills were circulated the small employer exception as well as the $2.75 an hour exception to federal wage controls had not come into effect and therefore these handbills are misleading.

9. Also it is the employer's position that misrepresentations were made to our employees in Union handbills numbered 49 and 34, attached to Employer's original Objections in the sense that we feel that in light of recent law the statements made in these handbills amount to an unlawful waiver of fees, conditioned on the Union's election victory, since the entire thrust of the 50 some handbills attached to Employer's original Objections indicate this was the case. Certainly in handbill 34, when the Union says "You do not pay a penny in dues until after your first contract is signed," the Union is saying, when we are elected you will not have to pay until a certain date. When this is read in relation to a later paragraph in the same handbill which states that every worker in the plant on election date will not have to pay any "initiation fees" it would seem clear the Union is continuing its "bargain basement offer" on winning the election, since otherwise the matter makes no sense.

10. Finally, I would like to make a few statements with reference to the false impression that the Union created with reference to the employer's position at the representation hearing

held on October 30, 1972. In a series of handbills issued throughout the campaign, including but not limited to the following handbills attached to the Employer's original Objections filed herein and numbered 19, 25 and 30, the Union charged that it was the company's tactic to delay the election. However, as shown by the transcript in Case No. 25-RC-5155 at pages 8 through 10 it was the Union's position that the employees in question -- leadmen and employees located in Loogootee, Indiana -- should not be allowed to vote. The Board held that the employees were eligible to vote and the company's position on this issue was affirmed. Therefore, any delay caused as a result of a representation hearing was delay caused by the Union, not the employer. I can make these statements because not only does the transcript support me in this respect, but I was present at the hearing and in fact testified on these issues.

Further affiant sayeth not.

William E. Sherbrooke
William E. Sherbrooke

STATE OF INDIANA)
)SS:
VANDERBURGH COUNTY)

Subscribed and sworn to before me, a notary public in and for said county and state, this 12th day of January, 1973.

Evelyn Sherbrooke
Notary Public

My commission expires:

1-14-74

December 4, 1972

Dr. Billy Graham
Minneapolis, Minnesota

Dear Dr. Graham:

I thought you might be interested in how your words and picture are being used. I am curious to know whether or not the I.U.E. has your permission for this.

I believe it is extremely important for you to know that today there are many good people who choose not to belong to a union.

This handbill was distributed to employes of the Virginia Corporation on November 27. The I.U.E. is using this and other leaflets in their attempt to organize the employes of Virginia Corporation.

You continue to have my respect and gratitude for your work.

Sincerely,

William E. Sherbrooke
Operations Manager

WES: jsk

Enclosures

T. W. WILSON
MONTREAT, NORTH CAROLINA 28757

December 28, 1972

Mr. William E. Sherbrooke
Operations Manager
Virginia Corporation
5600 Upper Mt. Vernon Road
Evansville, IN 47712

Dear Mr. Sherbrooke:

Your letter of December the 4th to Dr. Billy Graham in Minneapolis was forwarded to his home here in North Carolina.

It is unfortunate that Mr. Graham is quoted by people many times to suit their own cause. This statement attributed to Dr. Graham was taken completely out of its context and was used without his permission or knowledge at all.

I'm so sorry.

Thank you very much for your letter.

Most sincerely,

T. W. Wilson
Associate to Billy Graham

TWW:sw

Constitution

of the

INTERNATIONAL UNION

of

ELECTRICAL, RADIO

& MACHINE WORKERS

AFL-CIO-CLC

(As Amended January 1, 1969)

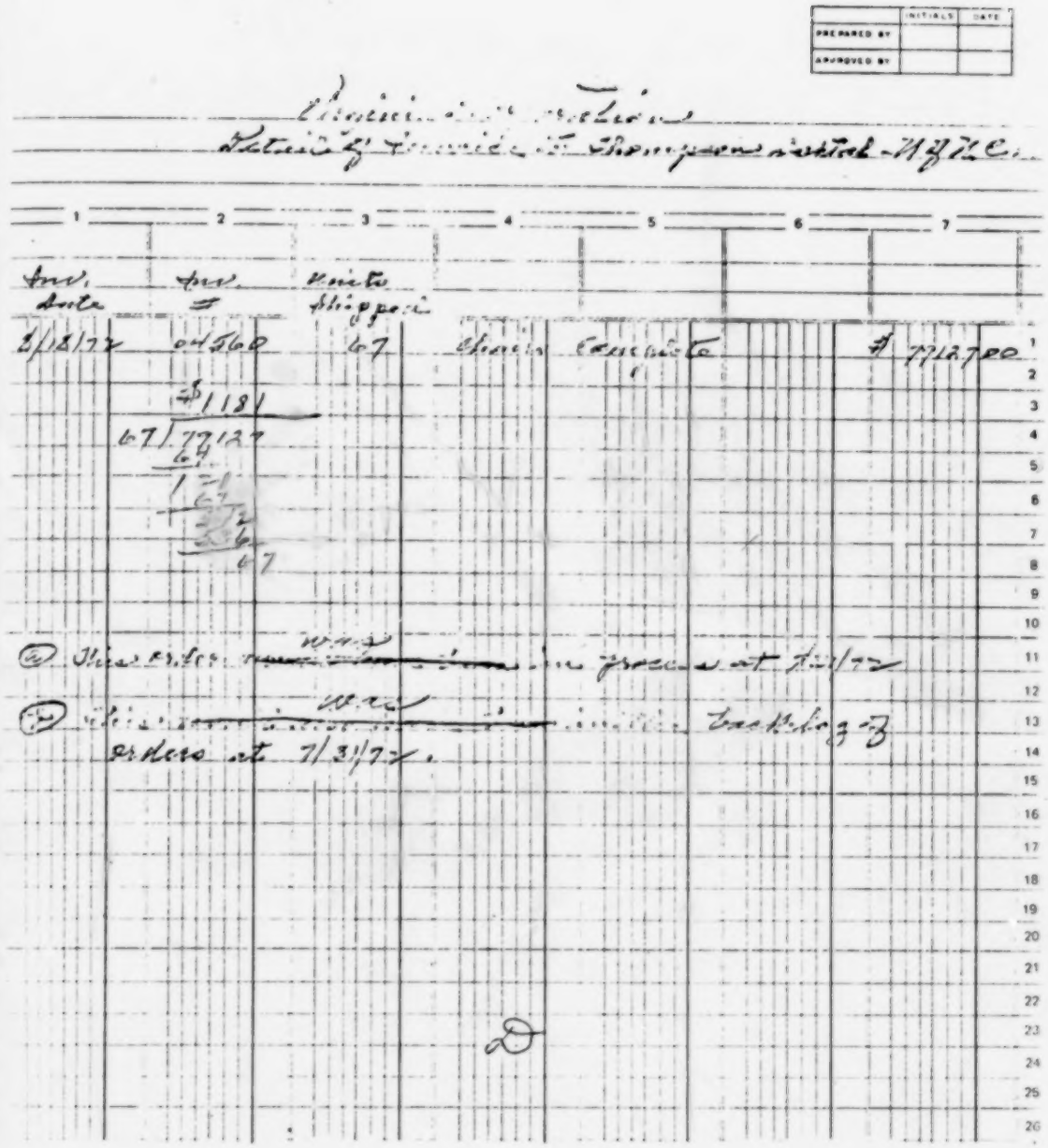
PAUL JENNINGS
President

DAVID J. FITZMAURICE
Secretary-Treasurer

ARTICLE XIV

Strikes and Collective Bargaining Agreements

Section A. Each Local shall send to the President of the International Union a copy of any notice to an employer terminating or modifying a collective bargaining agreement. Each Local shall, whenever a strike is contemplated, notify the President of the impending strike in sufficient time to afford the President or his designated representative an opportunity to adjust the dispute. No strike shall be called without the prior authorization of the President or his designee.



INVOICE

VIRGINIA CORPORATION

5600 UPPER MT. VERNON RD.
EVANSVILLE, INDIANA 47712
812 - 423-6489

TO

HTER DENTAL SUPPLY CORP.
MAIN STREET
KENSACK, NEWJERSEY 07601

INVOICE NUMBER 04226

DATE	INVOICE NO	CUST NO	TERR	CUST PO NO	TERMS	ROUTING
24/72	4220		105	007383 EQ	1/15 N/30	EASTERN EXPRESS B/L 6762

ITEM NO	DESCRIPTION	PRICE	DISC	AMOUNT
1-V62	CHAIR, SPLIT BACK, ARTICULATING HEADREST JADE GREEN NAUGAHYDE SER. NO. V-4831	2170.00	35%	1410.50
2-B72	BASE SER. NO. B-2225	INCL..		.00
				1410.50 14.11 1396.39
	FOR DR. DOHERTY			

PAID
Date 11-6-72
Ck. No. 632104

ACCOUNTS RECEIVABLE - 1ST COPY

INVOICE

VIRGINIA CORPORATION

5600 UPPER MT. VERNON RD.
EVANSVILLE, INDIANA 47712
812 - 423-6489

TO

ERSITY OF ILLINOIS
GE OF DENTISTRY PHASE I
. PAULINA RECEIVING PLATFORM
AGO, ILLINOIS 60612

TO

. SASLOW COMPANY, INC.
NORTH ORLEANS
AGO, ILLINOIS 60610

INVOICE NUMBER 03949

DATE	INVOICE NO	CUST NO	TERR	CUST PO NO	TERMS	ROUTING
3/72	3949		150	C 097914	1/15 N/30	CENTRALIA B/L 6602

ITEM NO	DESCRIPTION	PRICE	DISC	AMOUNT
1-V62	CHAIR, SPLIT BACK, ARTICULATING HEADREST WITH B-72 BASE SEE ATTACHED LIST FOR COLORS AND SERIAL NUMBERS	1162.00		77854.00
- 1-V62	LESS INSTALLATION DISCOUNT - 60.00 PER UNIT	60.00		4020.00
	PROSTHETIC HEADREST W/SLIDE	85.00		1275.00
				75109.00 751.09 74357.91
	SEE ATTACHED LIST FOR REPLACEMENT PARTS SHIPPED NO CHARGE			

Ck. No. 13134

ACCOUNTS RECEIVABLE - 1ST COPY

INVOICE

VIRGINIA CORPORATION

5600 UPPER MT. VERNON RD.
EVANSVILLE, INDIANA 47712
812 · 423-6489

TO
ERSITY OF ILLINOIS
EGE OF DENTISTRY PHASE I
S. PAULINA RECEIVING PLATFORM
CAGO, ILLINOIS 60612

D TO
.. SASLOW COMPANY, NC.
NORTH ORLEANS
CAGO, ILLINOIS 60610

INVOICE NUMBER 03761

DATE	INVOICE NO	CUST NO	TERR	CUST P.O. NO	TERMS	ROUTING
3/72	3761		150	C 097914	1/15 N/30	CENTRALIA B/L 6543

ITEM NO	DESCRIPTION	PRICE	DISC	AMOUNT
1-V62	CHAIR, SPLIT BACK, ARTICULATING HEADREST WITH B-72 BASE SEE ATTACHED LIST FOR COLORS AND SERIAL NUMBERS	1162.00		98770.00
- 1-V62	LESS INSTALLATION DISCOUNT - 60.00 PER UNIT	60.00		5100.00
				93670.00

436.20
93233

PAID
8-11-72
21234

ACCOUNTS RECEIVABLE - FILE COPY

INVOICE

VIRGINIA CORPORATION

5600 UPPER MT. VERNON RD.
EVANSVILLE, INDIANA 47712
812 · 423-6489

TO
ERSITY OF ILLINOIS
EGEOF DENTISTRY PHASE I
S. PAULINA RECEIVING PLATFORM
CAGO, ILLINOIS 60612

D TO
.. SASLOW COMPANY, NC.
NORTH ORLEANS
CAGO, ILLINOIS 60610

INVOICE NUMBER 03670

DATE	INVOICE NO	CUST NO	TERR	CUST P.O. NO	TERMS	ROUTING
1/72	3670		125	C 097914	1/15 N/30	CENTRALIA B/L 6507

ITEM NO	DESCRIPTION	PRICE	DISC	AMOUNT
1-V62	CHAIR, SPLIT BACK, ARTICULATING HEADREST WITH B-72 BASE SEE ATTACHED LIST FOR COLORS AND SERIAL NUMBERS	1162.00		97608.00
1-V62	LESS INSTALLATION DISCOUNT - 60.00 PER UNIT	60.00		5040.00
				92568.00

8-11-72
13121

ACCOUNTS RECEIVABLE - FILE COPY

VIRGINIA CORPORATION

INVOICE

5600 UPPER MT. VERNON RD
EVANSVILLE, INDIANA 47712
812 - 423-6489

TO
ERSITY OF ILLINOIS
GE OF DENTISTRY PHASE I
. PAULINA RECEIVING PLATFORM
GO, ILLINOIS 60612

TO
. SASLOW COMPANY, NC.
ORTH ORLEANS
GO, ILLINOIS 60610

INVOICE NUMBER 03562

DATE	INVOICE NO	CUST NO	TERM	CUST P.O. NO	TERMS	ROUTING
8/72	3562		135	C 087914	1/15 N/30	CENTRALIA B/L 6472

ITEM NO	DESCRIPTION	PRICE	DISC	AMOUNT
1-V62	CHAIR, SPLIT BACK, ARTICULATING HEADREST WITH BASE FEDO - 20 ADULT - 64 SEE ATTACHED LIST FOR COLORS AND SERIAL NUMBERS	1162.00		97608.00
1-V62	LESS INSTALLATION DISCOUNT - 60.00 PER UNIT	60.00		5040.00-
				92568.00
				92568.00

8-14-72
13134

PAID

VIRGINIA CORPORATION

INVOICE

5600 UPPER MT. VERNON RD.
EVANSVILLE, INDIANA 47712
812 - 423-6489

P TO
VERSITY OF NORTH CAROLINA
R. RALPH DOMINGUEZ, ROOM S
.C. SCHOOL OF DENTISTRY
DENTAL EDUCATION BLDG.
PEL HILL, N. C. 27514

D TO
MPSON DENTAL CO., GREENSBORO, NC.
N. CHURCH ST.
ENSBORO, N.C. 27401

INVOICE NUMBER 04560

DATE	INVOICE NO	CUST NO	TERM	CUST P.O. NO	TERMS	ROUTING
8/72	4560		150	BID 720991 P-28274	1/15 N/30	ROADWAY EXPRESS B/L 6301

	ITEM NO	DESCRIPTION	PRICE	DISC	AMOUNT
2	1-V61	CHAIR, SPLIT BACK, STANDARD HEADREST BISCAYNE BLUE NAUG. SER. NO. V-4832 THROUGH V-4863	1291.00		41312.00
2	2-B72	BASE	INCL..		.00
5	1-V61	CHAIR, SPLIT BACK, STANDARD HEADREST DC-12 SEASAND NAUG. SER. NO. V-4854 THROUGH V-4897, V-5451	1291.00		45185.00
5	2-B72	BASE	INCL..		.00
		BASE NUMBERS AS FOLLOWS: B-2329 THRU B-2335, B-2338, B-2339, B-2341, B-2343, B-2349, B-2352, B-2353, B-2355, B-2364 THRU B-2416			
7	1-V61	LESS INSTALLATION DISCOUNT - 110.00 PER CHAIR	110.00		737.00
					86147.00

PAID

Voting is an American Tradition!

Today is Election Day. All over our great nation American citizens are taking advantages of their right to vote.

Voting is an American Tradition.

In the near future you will have an opportunity to decide another important issue affecting your life in the American Tradition. That will be when the NLRB conducts your secret-ballot election on Union Representation.

The way you vote in your NLRB election will determine if you will continue to practice the American Tradition of voting on matters affecting your job.

If you listen to the Company and vote against your Union, the ballot you cast may be the last time you will ever vote on anything affecting your job. The Company will simply go on being your PROSECUTOR, JUDGE and JURY -- using its DICTATORIAL POWER to decide everything for you.

On the other hand, when you vote for your Union you are voting to decide your wages, benefits and working conditions in the traditional American way of voting and letting the majority rule.

In the IUE --

You VOTE to decide the contract you want!

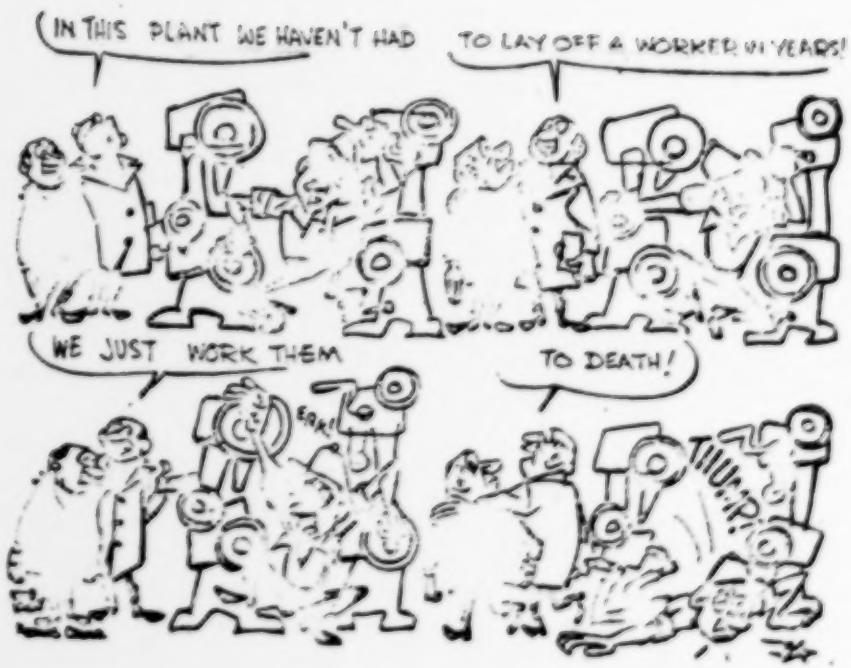
You VOTE to select your Union Officers!

You VOTE to select your Stewards!

You VOTE to decide how your Union spends its money!

You VOTE to decide your Union's position on the [illegible]!

Make the American Tradition of voting on the issues a part of your job -- VOTE YES!



In a non-Union plant you always know how much work the Boss expects out of you. It's always "MORE!" No matter how much you are getting out, it never seems to be enough.

So you push yourself and get out a little more. And what does the Boss say?

That's right -- "MORE!"

It isn't that way in a Union plant where your contract keeps the Bosses from demanding more and more all the time. What is considered a fair day's work today should be considered a fair day's work tomorrow. It's that simple.

If you are tired of the Boss always wanting MORE, vote "YES" and negotiate the contract protection you need in order to assure you of getting the benefit of that job with a fair day's work.

INTERNATIONAL UNION OF ELECTRICAL
RADIO & MACHINE WORKERS, AFL-CIO

Here's How

YOU RUN YOUR UNION

IUE-AFL-CIO

In the IUE, you and your fellow Members run your Union.

You select your Union leaders the American Way, in secret-ballot elections.

You have a right to be a candidate or support the candidate of your choice for any of the offices in your Union. Here are some of those offices:

PRESIDENT -- Your Local Union President has the responsibility of serving as chairman of your Union meetings and carrying out the policies you and your fellow Members elect to establish at those meetings.

VICE PRESIDENT -- Your Vice President has the job of assisting the President in performing his duties and taking his or her place in the event the President is absent because of illness of some other reason.

TREASURER -- Your Treasurer takes care of your Local funds.

RECORDING SECRETARY -- Your Recording Secretary keeps a written record of your meetings and Local correspondence.

TRUSTEES -- Every Local has Trustees who serve as the "watchdogs" over your Union's property and funds.

STEWARDS -- Your Steward serves in a capacity similar to the policeman on a beat. His job is to see to it that the Company doesn't violate your contract rights.

When it comes time to negotiate a new contract, you elect your NEGOTIATING COMMITTEE. You may wish to be a candidate for this important committee -- it's your right if you want to exercise it.

You and your fellow Members must approve of the contract proposal your Negotiating Committee presents to the Company. And YOU AND YOUR FELLOW MEMBERS MUST APPROVE OF YOUR CONTRACT BEFORE IT'S SIGNED!

Companies hire propaganda artists who rave about "Union Bosses" in their scare letters.

As you can see, you are the "boss" of your Union when you belong to the IUE -- so tell the Company to quit running you down when it starts talking about "Union Bosses."

YOU NEGOTIATE YOUR CONTRACT

IUE-AFL-CIO

In the IUE, you and your fellow workers decide the gains you want to achieve in your negotiations.

Throughout the negotiating process, you make the decisions by majority vote. NO IUE MEMBER, OFFICIAL OR REPRESENTATIVE OTHER THAN THOSE WORKING IN YOUR PLANT IS PERMITTED TO VOTE WHEN THOSE DECISIONS ARE MADE.

The IUE will assign EXPERIENCED NEGOTIATORS and EXPERTS in such fields as insurance, pensions and job evaluation to ASSIST your Negotiating Committee.

That's their role -- ASSIST! They do not "boss" or vote on the decisions you make.

You elect your Negotiating Committee. It will be composed of Members from your plant only. If you want to be a Member of your Negotiating Committee, you have the right to be a candidate in the election.

Here are a few examples of situations that could come up as you negotiate your IUE contract:

You and your fellow Members decide that you need three more paid holidays in order to catch you up with what the Company can afford. Which three? New Year's Eve? Good Friday? Christmas Eve? The Day after Thanksgiving? Those are all paid holidays that were won years ago for thousands of IUE Members. Other IUE contracts provide for the worker to get his Birthday off with pay. Some others provide for Veterans Day. Any way you go at it, you and your fellow workers will decide the paid holidays you want to negotiate into your contract.

The Company starts giving your Negotiating Committee a lot of doubletalk on the pension plan you propose. The IUE EXPERT on pensions is called in to help your committee get the discussions back on a sensible basis.

The Company's negotiator tries to pull a slick one on your committee, saying a certain inadequate Company proposal is about standard in most contracts. Here the EXPERIENCED NEGOTIATOR assisting your committee is valuable because he knows better.

Last, but not least, YOU AND YOUR FELLOW WORKERS MUST APPROVE OF YOUR CONTRACT WITH YOUR VOTES BEFORE IT IS SIGNED.

That's how you negotiate your contract.

So who's the "boss"?

AMAZING!

A company's financial health is measured by the percentage of clear profits it makes on sales. In 1971, America's top 500 industrial corporations made a clear profit of 3.8% on their sales. That's clear profit, after all taxes, Big Shot salaries and bonuses -- after everything.

Here are the percentages of profits made by some of the giants of American industry:

General Motors	6.8%	General Mills	3.9%
Shell Oil	6.3	Zenith	6.1
Pepsi	5.1	Inland Container ..	2.4
Whirlpool	4.0	General Electric ..	5.0

NOW GET THIS! For the year ending July 31, 1972, Virginia Corporation had sales of $2,480,700 and a clear profit of $352,108 after paying everything -- materials, wages, salesmen's commissions, Big Shot salaries and bonuses, taxes and anything else it spent money for.

THAT'S A CLEAR PROFIT OF 14.2% IN COMPARISON TO THE 3.8% AVERAGE PROFIT FOR AMERICA'S TOP 500 CORPORATIONS!!!

The financial success of Virginia Corporation is nothing less than amazing. It is also nothing less than amazing that an outfit so successful and making such fantastic profits on its sales could think so little of its workers.

By every measure applied to a company, Virginia Corporation comes out at the very top.

Except one -- that is the cheap level of wages and benefits paid to the workers who are making it such an amazing success.

The money is there -- THE IUE HAS MANAGED TO OBTAIN THE FACTS AND FIGURES TO PROVE IT!

Now, you can give yourself a chance to get your share.

Vote "YES" in your election so you will have your Union to negotiate the wages and benefits you need and deserve.

Vote YES

THE IUE LIE DETECTOR
MODEL 4 TRU-VU

COMPANY BOOKS REVEAL THAT IT HAD AMASSED $550,341 IN PROFITS NOT YET PAID OUT AS OF LAST JULY. ANY SHORTAGE OF CASH AT ANY TIME CAN BE TRACED TO SMALL INVESTMENT MADE IN THE FIRM -- $26,500 WORTH OF CAPITAL STOCK ACCORDING TO ITS OWN BOOKS.

VIRGINIA CORP. PROFIT PER EMPLOYEE IS OVER TWICE WHAT WHIRLPOOL CLEARS PER WORKER.

...PORATION
...ANA 47712 / (812) 423-6489

November 29, 1972

Dear Employee:

I think most of you know the history of Virginia's growth and the many financial problems we had meeting payrolls, getting machinery, and paying our suppliers. Even so during the past four years, (since the fire) we have added fringe benefits and pay raises as we could afford them.

Not until we were paid for the big college order in September, did we have enough money to safely foresee operating our plant during small recessions or a decline in sales. In fact the company didn't have enough money to pay for all of the machines in our plant and in order to get them, I paid for many with my own money.

Think of the numerous raises you got and you'll agree your company was trying to upgrade your pay whenever it could. As we progressed, so did you, even during Phase Two, we gave raises to the limits in effect. We are still under Phase Two and I wonder how the Union would violate that order.

THE IUE LIE DETECTOR

Since July, the Union
in on your steady empl
Would you like to have
cisions affecting your

We've come a long way
ference both you and t
hard before voting or
your freedom of direct
through stewards.

DESPITE ALL THE MONEY PILED UP BY LAST JULY -- A 72% INCREASE IN COMPANY WORTH SINCE DECEMBER 71 -- YOU WERE FORCED TO GO ANOTHER SUMMER WITHOUT A VACTION. MR. FRITZ MUST HAVE A FROG IN HIS POCKET WHEN HE SAYS "WE"

Don't you think your best bet is with a management that has proven its concern for you and has now firmly established the company as a reliable supplier of quality dental chairs and stools.

You'll fare better voting NO!!

Cordially yours,

Ed

E. E. Fritz, President

ALL WAGES UNDER $2.75 AN HOUR ARE EXEMPT FROM ANY CONTROLS. AS FOR THOSE OVER $2.75, THE IUE HAS FOUGHT FOR AND WON RAISES WAY OVER THE 5.5% PER YEAR GUIDELINES. (A WHIRLPOOL ASSEMBLER MAKING $3.48 AT THE START OF CONTROLS COULD BE MAKING $4.58 AN HOUR NOW AS A PAINTER. -- CONTROLS DO NOT APPLY TO PROMOTIONS AND REACHING TOP RATE FOR JOB CLASSIFICATION) ED FRITZ COULD HAVE DONE THE SAME FOR YOU IF HE REALLY WANTED TO!

FANTASTIC!

Of all the amazing facts and figures the IUE has obtained on Virginia Corporation's success, these are the ones that stand out the most.

The value of the common stock investment in the Company is listed as $26,500.

<u>That's the total value of all the stock</u>.

With all the stock valued at just $26,500, the Company made $352,108 during the one-year period ending on July 31, 1972.

Don't you agree that a clear profit -- after taxes and everything -- of $352,108 on a stock investment of $26,500 is truly F-A-N-T-A-S-T-I-C!!!!

That $352,000 clear profit was way up from the previous year -- no doubt the profit for the present will be even more fantastic.

Those big profits are good news for you -- if you win your Union. <u>THE MONEY IS THERE</u>! This means that your Union can negotiate real good wages and benefits and the Company can still make huge profits on that $26,500 worth of stock.

The past record has proven that the Company's fantastic success will mean nothing until you get your Union. The wages and benefits at Virginia Corporation are at the very bottom of the list of Evansville area plants. The huge profits, salaries and bonuses you make for those who run this Company should place you at the top of that list.

THE MONEY IS THERE!

GIVE YOURSELF A CHANCE TO GET YOUR SHARE!

Vote YE$

THE MONEY IS THERE!

Small plant owners -- such as Mr. Ed Fritz -- like to use the size of their plants as a handy excuse for paying cheap wages and benefits.

However, common sense will tell you that the PROFIT PER EMPLOYEE is much more important than plant size when you determine whether a company is paying its workers what it can afford.

When it comes to profit per employee, Virginia Corporation stands right up at the top of the list. Here is a comparison of the Virginia Corporation's profit per employee and some of the profits big corporations are making on their employees.

<u>CORPORATION</u>	<u>CLEAR PROFIT</u>	<u>EMPLOYEES</u>	<u>AVERAGE PER YR.</u>
General Motors	$1,935,709,000	773,352	$2,504
Whirlpool	50,387,000	25,687	1,961
General Mills	43,856,000	32,556	1,349
General Electric	471,800,000	363,000	1,025
Swift	34,094,000	34,900	977
VIRGINIA CORPORATION	352,108	80	4,401

Note -- Virginia Corporation figures are from financial statement obtained from the IUE. All others are from the May 1972 issue of <u>Fortune</u> magazine.

As these facts and figures prove, Virginia Corporation is in a better financial condition for providing its employees a good raise than Whirlpool -- or General Motors for that matter.

Of course, that's what you would expect when you consider that Whirlpool is paying its workers way over four dollars an hour to build refrigerators for prices that start at about $200 -- while Virginia Corporation gets that much for some stools and the price of a small auto for its chairs.

<u>The money is there</u>!

Mr. Ed. Fritz can't show you a plant in Evansville that's in better shape to sit down with its workers' negotiating committee and provide a contract that pays high wages, good benefits and fair working conditions.

Give yourself a chance to get <u>your fair share</u> of the Company's amazing profits -- VOTE "YES"!

IUE

VOTE IUE-AFL-CIO

$352,108.00

The $352,108.00 CLEAN PROFIT racked up by Virginia Corporation in the year ending July 31, 1972 is so huge that it has to be compared to the profits made by other corporations in order to grasp the full significance of the amount of money the Company is making while holding your wages down at the bottom of the list.

For example, Kaiser Steel -- with 12,055 employees -- cleared $355,000 in 1971.

That's right. After all that poor-mouthing and outright lying about not being able to pay you the wages and benefits you need and deserve -- we learn that Virginia came within $3,000 of making as much in a year as Kaiser Steel with 12,055 employees!

That just about takes the cake!

And don't forget -- that $352,108 was clear after everything -- Big Shot salaries and bonuses, depreciation on equipment ... the whole works. (There is no telling how much the Big Shots raked off the top.)

It's also after all taxes and this is important because your pay and raises come out of gross profits before taxes. When Virginia or any other profit-making company gives a raise, only part of it comes out of the clear profit -- the rest comes out of the taxes the company would otherwise pay.

In 1971, American corporations had a gross profit of $83 million and paid taxes (Federal, state, etc.) of $37 million. This amounts to each dollar of gross profit breaking down into 55 cents clear profit and 45 cents taxes. So, on the average, every dollar in additional wages only takes 55 cents from a corporation's clear profit.

A 50¢ hourly raise last year would have cost Virginia $1,000 per year, per person -- about $80,000 out of its gross profits and $44,000 out of that $352,108 clear profit. THIS WOULD HAVE LEFT A CLEAR PROFIT OF $308,000 AFTER GIVING EVERY MAN AND WOMEN AT VIRGINIA A FIFTY-CENT RAISE FOR THE ENTIRE YEAR.

VOTE YES

IUE AFL-CIO

Why don't those union handbills brag about "The Union through N.L.R.B. regulations has stopped the company from giving any more benefits or promises of wage increases during our union organization drive." This is what the unions have done as printed in N.L.R.B. reg. 8, paragraph (c).

You can help the IUE nail down the above Company whopper which appeared in a Company handout dated December 8.

Go to the official election notice the NLRB has required the Company to post in the plant and look at the "RIGHTS OF EMPLOYEES" section on the right-hand side. About half way down you will read that it is a violation when a party capable of doing so is guilty of

> "Promising or granting promotions, pay raises, or other benefits, to INFLUENCE an employee's vote..."

The key word is "INFLUENCE." What it boils down to is this: A Company can't BRIBE an employee with a raise, promotion, or benefit.

There is nothing to keep a Company from giving its employees a raise or other benefit that is not a bribe. If the Virginia Corporation had scheduled a general raise during the election period, it could go ahead and give it to you. If the Virginia Corporation has a policy of moving people up to the top pay for each classification, it can carry out that policy by giving you a raise to the top now. If you are promoted, the Company can go ahead and give you the raise that should come with the promotion.

This Company attempt to blame the NLRB regulations that protect you from losing elections because some voters are bribed with raises is just the latest lame excuse it has offered for the cheap wages it pays.

Remember how the Company poor mouthed and claimed it couldn't afford to pay more? The IUE shot that one down by examining the labor cost and then informing you about the $352,108.00 clear profit the Virginia Corporation made on your labor for the year ending July 31, 1972.

And then it tried to tell you that wage controls were holding your wages down to the bottom of the Evansville list. So the IUE had to come back with the truth again -- telling you how you can get much more than 5.5% raises -- starting with the fact that ALL WAGES UNDER $2.75 AN HOUR ARE EXEMPT FROM ANY CONTROLS.

What excuse will the Company cook up next?

You can bet it won't be the real reason your wages and benefits are so low -- BECAUSE YOU DON'T HAVE A UNION!

Your 'YES' vote will take care of that situation this Thursday morning!

THE CAT'S OUT OF THE BAG!

The IUE has the documents to prove that Virginia Corporation is enjoying fantastic success while paying you the cheapest of wages and benefits.

The IUE also has the full text of the wage control laws and directives which prove the Company hasn't been telling the truth about giving you all the raises allowed.

Those documents will be available for your personal inspection at your IUE Meeting to be held this Wednesday at the Central Labor Temple -- 210 North Fulton. (Meetings are set for right after work and again at 7 p.m. Bring a friend or relative with you if you wish, everyone is welcome.)

Win or lose, the IUE is not going imitate Mr. Ed Fritz's gutter campaign of mudslinging and whoppers. However, it is obvious that nothing will inspire him to conduct his ant-Union campaign on a higher level -- not even the numerous times the IUE has caught him telling those whoppers.

The initiation fee lie provides a good example. Over and over, the IUE has explained that you will pay NO initiation fee. On November 28 the IUE devoted an entire leaflet to the truth about initiation fees and dues.

And you know what happened -- Mr. Fritz came right back in his December 4 letter with the same old whopper!

It will be impossible to keep up with all of those whoppers trying to scare you out of your Union between now and Thursday. SO CONSIDER THE SOURCE AND HOW OFTEN HE HAS BEEN CAUGHT.

The IUE believes that the men and women at Virginia have the intelligence to make their decision after looking at the facts and figures. We will continue -- in these last few days -- to present those facts and figures.

IUE Meeting

All Virginia workers are reminded to attend their last IUE Meetings to be held before your election.

<u>The meetings will be held THIS AFTERNOON right after work -- and again at 7 p.m. this evening.</u>

Same place -- Central Labor Temple at 210 North Fulton -- that's between Franklin and Illinois.

Bring any friend or relative you wish. Everyone is welcome.

<u>REMEMBER</u> AT THESE MEETINGS, THE IUE WILL SHOW YOU THE DOCUMENTS PROVING THE FACTS THE IUE HAS TOLD YOU ABOUT THE COMPANY'S FINANCIAL CONDITION AND OTHER ISSUES

SEE <u>YOU</u> AT <u>YOUR MEETING</u>!

Throughout your organizing drive the Company has been saying, "The Union can't get you more than Virginia Corporation can afford."

Of course, the Company kept a lid of secrecy on its fantastic profits while poor-mouthing and crying all the way to the bank. Mr. Ed Fritz (while handing the Big Shots those whopping bonuses) even had the gall to say he was having trouble meeting the payroll!

Then the IUE came up with the facts and told you the truth about Virginia Corporation's huge profits.

<u>The lid's off</u> -- and the Company doesn't know how to explain away its cheap wages and benefits while making more money per worker than any Evansville employer it can name.

A fifty-cent raise would give you and your family another $1,000 per year to buy the things you need but must do without because of the cheap wages Virginia pays.

A fifty-cent raise for 80 workers would cost the Company about $80,000 out of <u>its gross profit</u> -- not that $352,108 clear profit. The average corporation pays about 45% of its gross profits in taxes, leaving 55% clear.

This means that out of that $80,000, Virginia would pay $36,000 less in taxes -- and take $44,000 out that $352,108 clear profit -- leaving about $308,000 CLEAR PROFIT AFTER GIVING EVERY WORKER A 50¢ RAISE!

The money is there. Your vote will determine if you give yourself a chance to get your share.

IUE

Vote YES

No. 75-745

In the Supreme Court of the United States

OCTOBER TERM, 1975

CHAYES VIRGINIA CORP., A WHOLLY OWNED SUBSIDIARY OF BCC INDUSTRIES, INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

JOHN S. IRVING,
General Counsel,
National Labor Relations Board,
Washington, D.C. 20570.

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1. In the underlying unfair labor practice case the Board found that Chayes Virginia Corp. (the Company), following an election conducted by the Board and certification of the International Union of Electrical, Radio and Machine Workers, AFL-CIO (the Union), had violated Sections 8(a)(1) and (5) of the National Labor Relations Act by refusing to bargain with the Union. The Board therefore ordered the Company to bargain with the Union upon request (Pet. App. B, pp. 7-17). The court of appeals enforced the Board's order after having found that the Board had not abused its discretion in overruling the Company's objections to the election (Pet. App. A, pp. 1-12).

2. The Company's basic contention is that the Board, and the court of appeals upon review, failed to measure the propriety of certain pre-election conduct attributable to the Union by the same standards it would have used

had that conduct been engaged in by the Company—as required by this Court's decision in *National Labor Relations Board* v. *Savair Mfg. Co.*, 414 U.S. 270. This contention is without merit.

The issue that the Board must resolve, when ruling upon objections to the conduct of a party during a representation election, is whether such conduct impeded the free and fair exercise by employees of their right to choose, or refrain from choosing, a bargaining representative. An analysis of the incidents relied upon by the Company in the present case shows that the Board properly concluded that the conduct complained of did not warrant the setting aside of the election.

The Company's first objection charged that a few days before the election the Union had conducted a coercive poll of the employees by telephone. As the court below pointed out (Pet. App. A, p. 5), however, the only evidence offered by the Company in support of this allegation tended to show that "one employee was telephoned concerning his union sympathies by an individual claiming to be a union agent and two other employees were telephoned by the same individual while they were not at home." Even assuming that the telephone calls were made as alleged, the Company made no effort to establish that the completed telephone call had been coercive in nature or that the calls together might have affected the election.[1]

[1]In discussing the alleged telephone calls, the court of appeals pointed out (Pet. App. A, p. 5) that the coercive potential of such calls is greater when made by an employer than when made by representatives of a union. Contrary to the Company's contention, however, that observation is not inconsistent with this Court's decision in *National Labor Relations Board* v. *Savair Mfg. Co.*, *supra*. Regardless of the identity of the party having engaged in the disputed preelection conduct, the Board is required in dealing with a challenge to a representation election to determine whether employee free choice has been infringed. In the present case, the Company simply failed to allege facts that would have supported a finding by the Board that the Union had engaged prior to the election in conduct that might have impeded a free and fair election.

The Company's second objection charged that the Union had engaged in an unlawful campaign involving threats against certain employees. One affidavit submitted by the Company alleged that a deaf employee had been called a "chicken" for refusing to support the Union and had been warned that all deaf employees would be laid off if the Union lost the election. The second affidavit alleged that an employee had been cautioned that "something" might happen to her home or car if she failed to sign a Union card. But as the court below noted (Pet. App. A, p. 6):

> During the Board's investigation, the deaf employee denied any threat connected with the election. Moreover, the record discloses that she tested out the validity of the prophecy of a layoff by reporting it to an officer of the company who assured her of its falsity and instructed her not to be concerned. The second affidavit, which was untimely submitted, fails to identify either the name of the fellow-employee or to establish that she was in any way associated with the union * * * .

The Company's remaining objections (see Pet. App. A, pp. 7-10) stood on no firmer basis. The record does not support the Company's contention that the Union improperly promised to obtain certain benefits for employees if it prevailed in the election, or that some of the circulars distributed by the Union contained material misrepresentations that might have affected the election's outcome. Finally, the Union was not guilty of misconduct in promising to waive initiation fees, if certified, for all employees working in the plant at the time of the election,

since the promise of an unconditional waiver of initiation fees does not constitute coercion affecting employee free choice in an election.[2] See *National Labor Relations Board* v. *Savair Mfg. Co., supra*; and Memorandum for the National Labor Relations Board in Opposition in *Benner Glass Company* v. *National Labor Relations Board* (No. 75-654, petition for certiorari pending).

The petition for a writ of certiorari should be denied.
Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

JOHN S. IRVING,
General Counsel,
National Labor Relations Board.

JANUARY 1976.

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[2]Since the Company failed to allege facts which, even if true, would have warranted the setting aside of the election, the Board did not abuse its discretion in disposing of the Company's objections without a hearing. See Pet. App. A, pp. 11-12; 29 C.F.R. 102.69(d).